JP-22

ISSN 1710-9442

Legislative Assembly of Ontario

First Session, 38th Parliament

Assemblée législative de l'Ontario

Première session, 38e législature

Official Report of Debates (Hansard)

Wednesday 2 March 2005

Journal des débats (Hansard)

Mercredi 2 mars 2005

Standing committee on justice policy

Mandatory Gunshot Reporting Act, 2005

Chair: Shafiq Qaadri
Clerk: Katch Koch

Comité permanent de la justice

Loi de 2005 sur la déclaration obligatoire des blessures par balle

Président : Shafiq Qaadri
Greffier : Katch Koch

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Wednesday 2 March 2005

Mercredi 2 mars 2005

The committee met at 1104 in room 228.

MANDATORY GUNSHOT REPORTING ACT, 2005

LOI DE 2005 SUR LA DÉCLARATION OBLIGATOIRE DES BLESSURES PAR BALLE

Consideration of Bill 110, An Act to require the disclosure of information to police respecting persons being treated for gunshot wounds / Projet de loi 110, Loi exigeant la divulgation à la police de renseignements en ce qui concerne les personnes traitées pour blessure par balle.

The Chair (Mr. Shafiq Qaadri): I'd like to call the meeting of the standing committee on justice policy to order. As you know, we're here to deliberate on Bill 110, An Act to require the disclosure of information to police respecting persons being treated for gunshot wounds.

SUBCOMMITTEE REPORT

The Chair: May I respectfully call for the subcommittee report.

Mrs. Liz Sandals (Guelph–Wellington): I would be happy to move the subcommittee report. It's attached; it's here at the end. I think the relevant piece for committee members to note is: "(8) That the research officer provide a summary of testimonies by Friday, March 4, 2005." In terms of committee members' work, the deadline for submitting amendments will be Monday, March 7 at 4, and we will be doing clause-by-clause the morning of March 9. I would move the report, as printed.

The Chair: Mrs. Sandals, I'm advised that you need to read the entire report into the record for posterity.

Mrs. Sandals: I need to read the entire report? OK, I can do that.

"Your subcommittee on committee business met on Monday, February 21, 2005, and recommends the following with respect to Bill 110, An Act to require the disclosure of information to police respecting persons being treated for gunshot wounds:

"(1) That the committee meet for the purpose of holding public hearings in Toronto on Wednesday, March 2 and Thursday, March 3, 2005, from 9 a.m. to noon;

"(2) That the following groups be invited to appear:

"—Canadian Union of Public Employees;

"—Ontario Association of Chiefs of Police;

"—Ontario Medical Association;

"—Ontario Public Service Employees Union;

"—Police Association of Ontario;

"—the College of Physicians and Surgeons of Ontario;

"(3) That teleconferencing/videoconferencing technology be used if approved by the subcommittee on an ad hoc basis;

"(4) That the clerk of the committee, with the authority of the Chair, post information regarding the hearings on the Ontario Parliamentary Channel and on the Internet;

"(5) That the deadline for receipt of requests to appear be Tuesday, March 1, 2005, at 5 p.m.;

"(6) That the length of presentation for witnesses be 20 minutes for groups and 15 minutes for individuals;

"(7) That the clerk of the committee, in consultation with the Chair, be authorized to schedule all interested presenters on a first-come, first-served basis;

"(8) That the research officer provide a summary of testimonies by Friday, March 4, 2005;

"(9) That the deadline for written submissions be Thursday, March 3, 2005, at noon;

"(10) That the deadline for submitting amendments be Monday, March 7, 2005, at 4 p.m.;

"(11) That clause-by-clause consideration of the bill be tentatively scheduled for Wednesday, March 9, 2005;

"(12) That the clerk of the committee, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements to facilitate the committee's proceedings."

The Chair: Any further comments or debate? May I call for an adoption of the report by the subcommittee? Any opposed? Carried.

I'd now like to invite to the committee the first presenter of the day, Mr. Tim Hadwen. Do we have Mr. Tim Hadwen in the room? We do not.

Mr. Robert W. Runciman (Leeds-Grenville): Mr. Chairman, I'm not a member of the committee, as you know. It's my first look at the report of the subcommittee. I think what might be helpful in the deliberations, as well—you may want to consider this as you proceed—is to ask for the views of your new deputy minister, Mr. Fantino, with respect to this issue and the legislation, prior to making recommendations to the

assembly. He's now a member of the public service in Ontario, and I think his views would be very helpful to reaching recommendations. I would encourage that.

The Chair: It's my understanding that if the committee wishes to do so, we can issue a formal invitation, but I'll leave that to you to decide.

Mrs. Sandals: I've got no objection to the suggestion, except for the technical one that he's actually in Israel. I'm not sure when we might arrange for him to appear, given the motion we just adopted.

Mr. Runciman: I think, with modern technology, he could submit it in writing via e-mail. At least you would have it for consideration. He has significant experience with these challenges.

The Chair: Do I take that as the will of the committee?

Mrs. Sandals: So we're suggesting that we would invite him to make a written submission if he wished to. Given that he's out of the country, that might not be possible, but we could invite him to make a written submission if he wished to.

Mr. Peter Kormos (Niagara Centre): Let's not be naive. When the minister makes a submission, he doesn't sit down late at night on his PC, typing it out himself. There's high-priced staff that, if the minister wants to make a submission, will manage to write it for him, just as they would under any other circumstance.

Mr. Runciman: It's not the minister; it's the deputy.

Mr. Kormos: The deputy, any of those people.

The Chair: May I ask for a formal vote on Mr. Runciman's suggestion? Would those who are in favour of asking our new emergency commissioner, Julian Fantino, to make either an appearance or a written submission to this committee please raise their hand. Any opposed? I will direct the clerk to execute that.

Is Mr. Tim Hadwen in the room?

I'm advised by the clerk that due to the demonstration at the front of Queen's Park, there may be some difficulties with regard to access to the building. So with your indulgence, I will ask for a committee recess for about 10 minutes, till about 11:20, when we may be able to track our two witnesses down.

Mrs. Sandals: Just a question, if I may. Has security been given the list of witnesses we're expecting, to minimize the hassle if they actually get to the door?

The Clerk of the Committee (Mr. Katch Koch): It's been posted, and usually we send out to the various services around the building the names of people who will be appearing before the committee on a certain day.

Mrs. Sandals: So security would have those names, so that they don't get any hassle if they do get to the door?

The Clerk of the Committee: They should be aware of it, yes.

Mrs. Sandals: Getting to the door might be a hassle.

The Chair: The committee stands adjourned till 11:20.

The committee recessed from 1112 to 1122.

ST. MICHAEL'S HOSPITAL

The Chair: Ladies and gentlemen, I'd like to welcome you back to the standing committee on justice policy. We will now proceed to our first committee witnesses of the day.

Before beginning, I'd once again like to ask if Mr. Tim Hadwen of OPSEU is in the room.

If not, I'd now like to welcome our second scheduled presenter, Dr. Daniel Cass, chief of emergency medicine at St. Michael's Hospital and classmate from way back when. Dr. Cass, if you could introduce yourself by name for Hansard recording purposes. I understand that you've brought a PowerPoint presentation as well.

Dr. Dan Cass: I have.

The Chair: Dr Cass, just to inform you, you have approximately 20 minutes in which to offer your remarks. Should you leave any time at the end, we will divide that time equally amongst the three parties for any questions and/or cross-examination.

Dr. Cass: Thank you very much, Mr. Chair. My name is Dr. Dan Cass. I'm chief of emergency medicine at St. Michael's Hospital, and I'm pleased to have the opportunity to present to the standing committee today. I'll also introduce Mr. Jim O'Neill, the director of the inner-city health program at St. Michael's Hospital, as well. Jim has joined me today, although I'll be doing the presenting.

I appreciate the opportunity to address the committee today regarding Bill 110. I'd like to offer another perspective on some of the issues surrounding mandatory reporting. The perspective that I bring is from an inner-city practice in emergency medicine in an inner-city hospital.

By way of overview, I want to give a bit of background on how this submission came to be, address a couple of specific issues on the bill itself and then spend the bulk of the next 15 minutes or so talking about some of the pros and cons of mandatory reporting, and perhaps giving a different perspective on some of the issues. I'll finish off with some recommendations.

By way of background to this submission, St. Michael's Hospital, for those who are not familiar with the institution, was founded in 1892 by the Sisters of St. Joseph. Its mission at that time and now was to care for the poor and the sick in the inner city of Toronto. It provides care for some of the most marginalized populations in Toronto. Mandatory reporting in this particular environment has the potential to negatively impact the relationship between clinicians and their patients, perhaps more so and in a different way in this environment than in many other institutions.

Prior to being presented to you today, this position paper that you've just received was prepared by Dr. Phillip Berger, who's the chief of family community medicine—many of you know him from his work in the inner-city health area—myself—and with some input from Dr. Michael Falk. Dr. Falk is a pediatrician at St. Michael's, but he also has spent an extensive part of

his career in inner-city Los Angeles and has dealt with youth violence, and that's his area of specialty.

This position that I'm about to present was endorsed by the medical advisory committee at St. Michael's Hospital, which is constituted of the medical leadership and the community advisory committee of the board of directors of the hospital. Unfortunately, due to the timing of these presentations and of our meeting cycle for the board, this has not been formally presented to our board of directors. That will happen this coming Tuesday, March 8. I wanted to stress that we've brought this forward with the consultation as stated, but not with the final approval of the board at this phase.

The recommendations that I'm going to start and end with today are the following: first of all, that we would oppose the mandatory disclosure of the identity of gunshot wound victims, as proposed under Bill 110, but then, in fact, that we would support the mandatory reporting of statistics regarding all gunshot wound patients that are treated, without patient identifiers, to an appropriate agency. I'll go through this and the background in some detail.

A couple of background points. I feel a bit like I'm preaching to the choir in this room talking about how Bill 110 came to be, but I wanted to focus on one aspect of what led up to this. Obviously there have been a lot of public and media perceptions about gun violence and changes in the frequency of gun violence. There's been advocacy from law enforcement leadership, such as Chief Fantino in Toronto and, more broadly, the Ontario Association of Chiefs of Police. Finally, the OMA section on emergency medicine gave this a large profile with some of their work.

There was a sentinel case at Mount Sinai Hospital. I have to point out that Mount Sinai is not a trauma centre, they're not a centre that sees many gunshot patients, but, for whatever reason, a patient presented there a few years ago with a gunshot wound. Police were not involved initially, but knew of the incident and arrived at the emergency department. I think that's important, because Bill 110 is focusing a lot on notifying police and involving them. Police were involved in this case, as they are in almost every case of gunshot wound violence in the city that we're aware of. There was a request for information and the patient declined to identify themselves etc. There was a lot of to and fro with the administration and the hospital lawyers, and the decision was that there was no provision to allow them to disclose information to the police, and it led to frustration on all sides.

The emergency chief also sits on the emergency medicine executive for the OMA. A survey was conducted and less than a third of the members responded. Most had treated very few gunshot wounds. In fact, only 17% had ever treated more than 10 gunshot wound patients in their entire career. But in that segment of the population that responded, three quarters supported mandatory reporting. Ultimately, this was adopted by the emergency medical section and the OMA as a whole.

Subsequently, there has been a lot written in the lay press and the scientific journals regarding both sides of the issue, including significant opposition from a lot of clinicians, including emergency physicians. The College of Nurses of Ontario has come out in opposition to Bill 110.

I want to highlight a couple of specific points and then I want to move into the pros and cons a bit.

The specifics of Bill 110 require reporting for patients treated at acute care hospitals but not family physicians' offices and not free-standing walk-in clinics, and this is an issue. It has the potential to encourage patients to seek care for gunshot wounds at inappropriate facilities. I'm going to come back to that.

Another aspect in terms of the specifics of the wording of the bill is that it's left vague in terms of who is expected to do the reporting. Is it a clinician? Is it an administrator? The wording states that it is to be done as soon as reasonably practical to do so without compromising patient care. However, one would imply that if it's meant to be in a very timely, real-time way, this would involve the clinician rather than the administrator, who tends to be working more in a Monday-to-Friday, 9-to-5 environment. So the question is, does that place clinicians in a conflict-of-interest position?

The pros and cons of mandatory reporting: The basic tenet underlying all of this discussion is that clinicians and hospital administrators don't release patients' information to anyone, and that there are exceptions to this for very specific circumstances. None of these currently involve reporting directly to the police. If you look at the mandatory reporting requirements in the province of Ontario at the moment, as shown here, you'll notice in the right-hand column that none of these involve any reporting directly to police. There may be agencies that submit information after further discussion and further review to the police, but there's nothing that reports directly to the police, as it stands now. So this is a significant change in the dynamic that would occur.

As health care providers and as a society, I think we universally hold that there has to be a very high threshold for violating that confidentiality that exists. That threshold really has to be breached only to ensure the safety of the patient or of others.

1130

The arguments in support of mandatory reporting are basically twofold: One is protection of the public, and the other is prevention via a public health role, the tenet being that the more we know about the causes and the incidence of gunshot wounds, the more proactive we can be about prevention. I think there's some validity to that, which I'll come back to.

Our position is that gunshot wound reporting does not meet the necessary standard to breach that confidentiality. It doesn't increase public safety, there's a significant downside to reporting, and you can fulfill that desired public health role very effectively without resorting to a mandatory reporting structure. I'll go through this in a bit.

In terms of the unnecessary nature of mandatory reporting, duty-to-warn provisions exist currently in the

common law. Right now, if we are treating an individual and we feel that the public is at risk from that individual, we are allowed to go to the police. There's common-law legislation in both Canada and the States to support this; professional colleges, such as the College of Physicians and Surgeons of Ontario, have this as policy. Most recently, in the PHIPA legislation, subsection 40(1) indicates that this information can be disclosed if there are reasonable grounds that disclosure is necessary for eliminating risk to others. So there are already provisions to do this without requiring Bill 110.

Secondly, the police are involved in most cases. In the vast majority of instances, whether it's through the 911 tiered-response process that occurs or through word of mouth, the police are almost always involved in these cases. Having worked in a trauma centre for 11 and a half years, I cannot remember a single instance in which I treated someone with a gunshot wound where the police were not already involved.

If the police aren't involved and we approach people, most are willing to have the police involved. In those rare circumstances where someone's not willing to co-operate and they don't want the police involved, I would submit to you that disclosure to the police of their identity is unlikely to lead to any useful information from the victim. Probably more importantly, Bill 110 neither compels the patient, nor does it allow the health care provider, to give more information to participate in the investigation. It's simply the name.

It has the potential, paradoxically, to put the health care worker in a bit of a bind. Police say, "You're required under law to report to us. Tell us about this guy. He's not talking to us; you come talk to us." Well, we can't. There's no provision under here that allows or compels us to provide more information than simply their name and the fact that a shooting has occurred.

In terms of the effectiveness of mandatory reporting, it's already in place in a number of institutions. We need look no farther than the United States, where 48 of 50 states have this in place. It's never been shown to reduce rates of violent crime or weapons-related charges, or to increase success in investigations. It's never been shown to be effective for its prime purported purpose of improving public safety.

There are downsides. Hopefully, I've impressed upon you the lack of need for this legislation. Let me talk about some of the downsides.

First of all, there's the potential for victims to delay or avoid presentations to emergency departments. The current draft, as I mentioned, excludes physicians' offices and walk-in clinics.

There are parallels to this situation that occurred in the 1980s, when there was mandatory reporting and disclosure of patient information of HIV-infected people. There was a well-documented pattern in the city—indeed, throughout the province and the country—that people would refuse to seek care or would decline to have testing done because of the fear of what happened when that information was disclosed.

In terms of avoidance of care, there's actually some evidence that this happens. The Journal of Trauma in the year 2000 had an interview in the United States with convicts who had been shot in the course of criminal activities. They asked them if they had gone to the emergency department for care. In fact, 92% of those who had been shot went to the emergency department for care. If you think about that for a second, it means that 8% of them didn't. One in 12 people in this population group who had been shot didn't go to the emergency department because of fear of the involvement of police. I don't think we want a system where people are discouraged from seeking appropriate medical care for fear that the police will then descend upon them.

The second downside is that it puts patient trust at risk. There's a blurring of responsibilities: Is the clinician working on behalf of the patient, or are they working on behalf of the police? In our marginalized populations in the inner city, I think this is an even larger issue than the general population. There's a greater mistrust.

As evidence of that, Stephen Hwang, who is a researcher at our inner-city health research unit at St. Michael's, published last year a survey of 160 homeless men in Toronto. Nine percent reported they'd been assaulted by police within the past year. They were asked, "In an emergency, who would you turn to for assistance; who would you trust?" Some 92% said they would call paramedics. Only 69% would involve police. There's a perception—and I'm not here to argue whether it's real or imagined—in many of our marginalized population that involvement of the police has some negative connotations that may impact care.

The third downside is that of a slippery slope. The initial draft of Bill 110, I'll remind the members of this committee, included reporting of stab wounds; that was removed.

The Ontario Association of Chiefs of Police position statement in 2000, and reiterated since then, is that the government should enact legislation to permit health care professionals to disclose personal information of patients if there's reasonable grounds to believe a crime has been committed—a crime, any crime, not just violent crime.

There's a will out there to move this far beyond simply reporting gunshot wounds. So the premise is: today, gunshot wounds; tomorrow, what will it be? As a society, is this a direction we want to move in? Do you want to have mandatory reporting of domestic assault, bar fights, suspected criminal activity? Where do you put the line on this?

Some of the proponents of this legislation have said, "Well, a gun is an indiscriminate killing machine that in the hands of someone has the potential to harm innocent bystanders." I agree. I would submit to you, so does a car operated by an impaired driver, but as a society we do not mandate that physicians report impaired drivers to the police department. They report to the Ministry of Transportation if they feel there's a medical condition that impairs their ability to operate a motor vehicle, but there's nothing today that compels me or allows me to

call the police if we have a drunk driver in our trauma room. I'm only suggesting that we need to be consistent in what society's expectations are.

The final downside is that it may increase the risk to hospital personnel if a victim feels that their care provider has betrayed their confidence. There's potential for coercion and threats to staff: "You know, Doc, I know you're supposed to report this, but it would really be in your best interest if you didn't." We've heard phrases like that in other circumstances. Right now, we have the ability to not report in some circumstances.

In terms of the public health role, I think this is a really positive aspect of a mandatory reporting structure. There's some evidence that the more data you have about the issue, where the hot spots are, what neighbourhoods have a gun control problem, what groups in society have an issue, the better you can target community interventions to high-risk groups and high-risk areas. I absolutely support that. There's evidence from inner-city United States centres to support this statement.

The fact is, you can achieve all of this with non-nominal data. You can take off the patient identifiers and submit that information to a database for public health study without having to involve individual patient names. For example, right now trauma registries exist which do exactly that. If a patient comes in with a minor gunshot wound, they may not be included in a trauma registry, which is really for people with multiple injuries, but it would be very easy by extension of legislation to require the reporting of all gunshot wounds without the patient identifiers.

In conclusion, patient privacy and confidentiality, I think, is a basic tenet of health care. We accept that there are certain circumstances where we have to breach that confidentiality. It must be for the protection of the patient or the public in a meaningful way, it must not be indiscriminate, and it's usually not to the police.

Mandatory reporting of gunshot wounds, I would submit to this committee, does not meet the threshold to justify breaching the confidentiality. It's unnecessary, ineffective and has potential downsides. We can achieve the public health benefits by using non-nominal patient data.

The recommendations, again, where we started from: to oppose the mandatory disclosure of the identity of gunshot wound victims as per the current draft of Bill 110, but to support the mandatory reporting of statistics, without patient identifiers, for all gunshot wounds to an appropriate agency.

I would be happy to have any questions at this point from the committee. Thank you.

The Chair: Thank you, Dr. Cass. We have about four or five minutes, which we'll divide evenly, starting with the PC caucus.

Mr. Runciman: I think it's unfortunate, as I said at the outset, that we're not going to have anyone here as a sort of point/counterpoint, the chiefs' association, for example, who have been the main advocates of this kind of legislation. They're not able to appear, apparently.

I have to say to the witnesses that I certainly disagree with the point of view they've put forward here today. I can only say from my own experience as a justice minister for a number of years—I think the primary advocate for this was the chief of police in the city of Toronto and some of the challenges that his officers were confronted with with respect to individuals who had suffered gunshot wounds and the lack of co-operation from certain hospitals and the fact that they were only made aware of gunshot victims in their hospitals because a staff person, a nurse or whoever, quietly made the call to the police because the officials in charge at the hospital were not going to do so. They were very concerned and they had their conscience, if you will, with respect to this matter encourage them to make the call to the police, and when they arrived at the hospital, there was a refusal to co-operate in terms of even interviewing, let alone being provided with an identification of, an individual who may have been involved, and clearly was involved, in some sort of interaction with weapons.

1140

You mentioned the 48 of 50 US states. I think it would be nice to have some information with respect to the medical profession's views when virtually every state in the United States has some form of mandatory reporting. They also have some significant penalties, which this legislation doesn't appear to incorporate, including up to three years in prison, for example, and significant fines. The government, to their credit, isn't suggesting that sort of approach here. You could perhaps reference that.

Stab wounds: I'd like to know at some point about the number of stabbing incidents—maybe you don't compile those statistics currently—versus gunshot wounds that you're confronted with at St. Mike's.

The other element of this is the fact that you're making this presentation, and the board at St. Mike's has not yet—this is a community board made up of representatives of the community. Hopefully, in my view, they may have a different perspective on this. I think this is a sort of professional cover-your-ass approach. When someone has been involved in what is clearly an act of violence and perhaps is the perpetrator of an act of violence himself or herself, I personally see nothing wrong with there being some sort of moral and community obligation on the part of professionals to make sure the police in the community are aware of that and the presence of that individual in their facility or institution.

That's my view of the world, Mr. Chairman. I don't know if we have any time left.

The Chair: I think we need to move on to the NDP caucus. Dr Cass, maybe I'll just get Mr. Kormos's comments, and if you need to address the Tory comments, please do that. Mr. Kormos.

Mr. Kormos: Thank you, gentlemen. I, for one, welcome your comments, because I'm not about to give this government an easy ride on this legislation, or any other, for that matter.

I've read some of the data on the Legislative Assembly Web site: the reference to OMA and their

position and the counterpoint as well from within the OMA. First of all, the vast majority of gunshot deaths are suicides—that's what the data in that material told me—and a significant number of gunshot wounds presenting themselves to the hospitals are attempted suicides, which, folks, is no longer a crime.

My concern is that doctors will be forced to invoke police participation in an attempted suicide, for instance, without any discretion even when it's contrary, in their view, to the welfare of the patient. Police do what they've got to do. Police are not doctors or health professionals, and they know it as well as anybody.

What can you tell us about any concerns you might have about that observation that, first of all, the criminal gunshot wounds are the minority? Self-inflicted accidental and self-inflicted purposeful are, as I understand it, in the vast, vast majority. What do you say about the mental health perspective, which concerns me a great deal?

Dr. Cass: First of all, I would say you're absolutely correct in terms of the leading causes of gunshot wound victims presenting, the cause of their injury, that it's more likely accidental or self-inflicted than criminal to begin with. The second point I would make is that we rarely see people who have self-inflicted gunshot wounds from suicide attempts, only because the lethality in that method of suicide is between 85% and 90%. So the number of people who attempt—

Mr. Kormos: You're not aiming at a running victim.

Dr. Cass: Correct. So it doesn't happen often, but I share your concerns that the indiscriminate involvement of law enforcement with someone who is in a mental health crisis may not benefit anyone.

If I may, could I take a moment and respond to Mr. Runciman's comments as well?

The Chair: Please, very efficiently, Dr. Cass.

Dr. Cass: I will very efficiently do so, as you know, Dr. Qaadri.

First of all, I thank you for raising the points that you did, partly because you helped illustrate some of the issues that I had raised in terms of the downsides. The slippery slope is apparent all over the comments that you made, sir—your comments about the desire to have this so that staff can co-operate with the police and help them in their investigation. This legislation does not do that, and it's setting up the expectation with the police that that's what is going to happen, that they're going to walk in the door and clinicians will be able to give them whatever information about the medical chart they need.

I've been heavily involved for three years in discussions with Toronto Police Services—with Bill Blair, with the chief's office—trying to put together a format for disclosure of information, not on gunshot wound patients but on everyday patients who come in, and determining what can and cannot happen. We've had instances where the police in our institution have threatened to take our staff out in handcuffs if they didn't provide patient information to which they had no access.

This does not give them access to any information other than a name, I would submit to you, in all but a minimal handful—I'm talking a few; four or five instances—that I'm aware of in the entire city of Toronto. We presented this at our emergency medicine grand rounds, and out of the combined experience of a number of emergency physicians and emergency residents from all of the centres across Toronto, of whom I asked, "How many of you have been involved in a circumstance in your entire career where someone presented with a gunshot wound where the police were not already involved?" there were two individuals in that entire room who had ever had it happen once.

The Chair: Thank you, Dr. Cass. I'd move now to the government caucus.

Mrs. Sandals: A number of us have questions, but let me start with one. It seems to me, in what I'm hearing you say, that you're painting a picture of a busy hospital emergency department. You have somebody with a gunshot wound. You have the police, you have an argument between the physician, the clerical people and the nurses present and the police, and everybody is having an argument about who can do what.

This might, in fact, be useful legislation in terms of protecting the emergency physician, the nurses and the clerical staff, because it's quite clear in this legislation what the responsibility is. The facility is responsible for developing a protocol within the hospital, so something presumably negotiated within the hospital. The police will be notified as soon as is practical, with the name. In a busy hospital setting this would perhaps enable you to get on with the business of treating patients and make it clear what you are responsible for reporting, because this makes it quite clear what you are required to report. This would seem to me to be facilitating your work rather than interfering with your work. I'd like to hear you comment on this.

I would suggest that, as we move around the province, different situations present, but in your own particular situation this might actually clarify the situation and let you get on with your treatment.

Dr. Cass: I can appreciate the perspective. I don't think that's the reality, though, because the information that's being sought in those discussions or arguments, however you want to characterize them, is rarely the fact that a patient's there or their name. In almost every circumstance, they have that information; it's rare for them not to. Where the arguments set in is in how much more information we are allowed to give them.

I can understand that this would seem to clarify. It takes away a tiny part of the puzzle, but it opens the door to a whole bunch more. So there's nothing except in the negative. By interpreting that anything that's not in this bill they don't have rights to, which is not accepted by the police, may I add, in our discussions with them—the police accept that the name being disclosed is the scope of the bill. There still is not clarity. To this day, there isn't clarity on what else can and should be disclosed by health care workers to police, apart from the identity of a victim. So this will take care of the identity of the victim, which is hardly ever the issue.

Mrs. Sandals: So in terms of privacy, then, this isn't actually interfering with privacy in the sense that, in many cases, the information would already be available.

Mr. Brownell had a brief question.

The Chair: If I may, Mrs. Sandals, just move on, we are a bit behind on the schedule because we were delayed with our witnesses.

Dr. Cass and Mr. O'Neill, I'd like to thank you for your testimony today as well as your audiovisual support and the written materials you've brought with you today.

Dr. Cass: Thank you for the opportunity.

The Chair: I would now like to invite—yes, Mrs. Sandals?

Mrs. Sandals: Could we just have one follow-up piece of information, then? When you get the result of the board's decision, it would be helpful—

The Chair: I need unanimous consent for that.

Interjection.

The Chair: Fair enough.

Mr. Brownell: That was my question.

Mrs. Sandals: That was his question.

The Chair: Thank you once again.

Dr. Cass: I apologize for the sequencing of this and the fact that it has not gone to the board first, but we didn't want to miss the opportunity when a number of the duly constituted parts of the organization felt strongly about this.

1150

The Chair: I'd now like to invite Mr. Tim Hadwen.

Mr. Kormos: While these folks are seating themselves, I'd like to direct some matters to Ms. Drent of legislative research.

The first submission made reference to the opposition to this proposition by the College of Nurses. Could we get documentation of that? The first participants also spoke to the plethora—they didn't use that word—of news and scientific-journal types of articles around this. I know that on the OLA Web site, with the bill, there are some, but could we get a canvass of some of the prevalent ones, especially the ones that generate the debate, the point and counterpoint that has been referred to? Also, the reference to the observation that, in the vast majority of gunshot wounds, the police are already involved: Is there any data on this, or is that simply an observation that could be made?

The Chair: Thank you, Mr. Kormos; your suggestions and research requests have been noted.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair: I'd now invite Mr. Tim Hadwen. Sir, please introduce yourself for Hansard recording purposes. I remind you as well that you have approximately 20 minutes in which to offer your remarks. Should you leave any time at the end, we'll distribute that evenly amongst the three parties for questions. Please begin.

Mr. Tim Hadwen: My name is Tim Hadwen. I am the general counsel with the Ontario Public Service Employees Union. We represent 100,000 government and public sector employees. Several thousand of those employees are health care professionals working in public hospitals and other facilities that would be covered by this act.

With me is Patty Rout, a lab technologist, who is the chair of our health care professionals division and the direct representative of the employees who work in these facilities. She has canvassed employees who are directly involved in the kinds of situations to which this act would apply, and will be bringing forward the concerns that they wish this committee to hear.

We're grateful for the attention of the committee. Each of us proposes to make a brief submission of about five minutes' duration, and then we would be happy to take questions.

I'll begin by turning the microphone over to Patty Rout.

Ms. Patty Rout: I am chair, as Tim said, of the OPSEU health council, representing around 40,000 health care workers in this province. We work in mental health, ambulance, community, long-term care and hospitals.

I represent the types of members you would see in emergency. We have ward clerks, RNs, RPNs, pathology assistants, morgue attendants and technologists. Many of these workers will be in the emergency area when a gunshot wound is brought to the facility. I've spoken to our members about the situation, and this is what they've said.

We are generally opposed to the legislation for the reasons you have just heard, and we have an additional concern. When a person presents at the emergency door, they will first be introduced to a ward clerk, then a nurse, maybe a security guard, eventually a doctor, technologists, maybe a chaplain, and possibly the pathology assistant or the pathologist. Under the privacy act, as professionals, we are unable to release any information to anyone regarding a patient without consent. Under the policies and procedures in hospitals, only doctors can release a report to anyone over the phone.

Assuming that this legislation will change the relationship of the confidentiality between the health care worker and the patient, who will be responsible for reporting the gunshot wound to the police?

My members feel that this is the responsibility of the doctor. There are currently policies and procedures in hospitals to deal with such things. For example, in pathology, when a wound from a gunshot is discovered at autopsy—and it does happen there sometimes—the attending pathologist is required to call the coroner, and they decide whether the police are called. It is not the pathology assistant and it is not the pathology secretary who makes the call. This is a requirement of the doctor, and we believe the responsibility should remain with them.

We have to worry about the safety of our workers in hospitals. If a gang member finds out that we have to report every gunshot incident to the police, what sort of

situation could evolve in the hospital? Will there be enough protection for the workers? We know now how limited security is in the hospital setting, and that will have to change. We are not sure why gunshot wounds that appear at doctors' offices are not required to be reported, and certainly are concerned about the effect this bill will have on our community health centres and our members, as, with the passing of this bill, that would likely be the place we will find gunshot wounds presenting themselves.

In summary, we believe the physician should make the call of a gunshot wound to the police. Failing that, we need policies set in place to protect the confidentiality of the worker. There should be no sort of retribution from the regulated colleges for disclosing this information, and tighter security measures will need to be put in place in our hospitals.

Mr. Hadwen: If I could just speak briefly to the bill, and then we'd be happy to take questions. We have three points. The first is that we disagree with the bill entirely for the reasons you've heard; the second is that the obligation should be on the doctor to make the disclosure; and the third is that, if other staff are involved, they need a form of informant protection.

Dealing with the issue of the obligation being on the doctor to make the disclosure, in our view there's no need to involve non-medical staff at all. A physician will have to make the determination that a gunshot wound has occurred; it's a diagnosis. The physician, having made the diagnosis and being involved in the incident, should make the report to the police. This has at least three benefits: It clarifies who the attending physician is, avoids hearsay and second-hand information, and ensures that the right people are speaking to each other.

The requirement that the physician report should be backed up by the requirement that the physician chart the reporting in the facility record. That way, if there's a subsequent inquiry, there's a record of who has made the report and whose responsibility it is to be able to provide clarification. The physician requirement and the physician charting requirement could both be dealt with, if necessary, by way of regulation, but should probably be spelled out in the bill itself.

If other staff are to have any chance of being involved in reporting, then the identity of that staff person should not be subject to release by the hospital or by the police. Both institutions need to be required to maintain confidentiality of the identity of the individual and not provide that information in response to any form of inquiry or legal process. Maintaining informant confidentiality is not new to the justice system; there are good reasons to do it, including preventing reprisals and encouraging people to perform their jobs without fear of retribution. The only possible exception with respect to the maintenance of confidentiality of the individual who might be involved in reporting would be a court order, and then the ability of the court to make such an order should be structured such that it should be only if necessary in the administration of justice, bearing in mind the desirability of maintaining informant confidentiality.

We ask that the bill be defeated in all its forms but, in the alternative, that the report be made by the attending physician and that the attending physician chart the report; and, in the alternative, that if others are to be involved, the police and the hospital maintain their confidentiality, and only a court order under certain strictures be able to release the name to the third party.

In our view, the bill should be defeated, but in the alternative, these kinds of changes are required to ensure that there is adequate protection and an adequate sense of protection for health care workers in these facilities. Thank you very much.

The Chair: Mr. Hadwen and Ms. Rout, we have about nine minutes left for questions, and we'll start with the NDP caucus.

Mr. Kormos: Thank you, folks. It was interesting, because I saw the segment of the OMA that advocated for this bill, but they didn't offer up their membership as being the people responsible for doing the reporting of names, I suspect because most doctors didn't look forward to cooling their heels in the Mimico provincial court hallway for days at a time, after they'd been subpoenaed around the issue, for instance, of whether or not the purported victim perceived it as a crime or, in fact, it was reported as a result of the statute. I wonder if doctors have contemplated that. The Mimico courtroom—if you haven't been down there in a while, take a visit, because it hasn't gotten any better in the last 15, 20 years—pretty gamy place.

I note that they didn't offer themselves up. I'm presuming—and I'd like the chance to ask somebody who maybe is right there; you might know, though, yourself—that when somebody comes to an emergency room, at an appropriate time, once you've got the medical matter in hand, if any one of the health professionals there thinks that person has been a victim of a crime—either a mugging, an assault, a shooting, a knifing, a beer hall brawl or a domestic abuse—health professionals at some point will say, "By the way, do you want us to call the police for you or do you want an opportunity to call the police?" Is that a reasonable interpretation?

1200

Ms. Rout: I would think so. When we see social workers in emerg and they get presented with situations that need the police to be informed, they certainly ask consent of the patient at that point and then they move forward.

Mr. Kormos: I'm interested as well in the implications of this bill, and especially the bill as part of the slippery slope that some people here appear to even advocate. They're slippery-slopists, I suppose, in terms of their ideology. Let's take the case of domestic violence—again, we're still grappling with developing the means of adequately responding to this—where a woman, beaten, may not want at that point the police to be involved, for any number of good reasons from her

perspective. If she's the victim of a gunshot wound, qualitatively she's still a victim and qualitatively still is subject to all of the apprehension and fears, and it seems to me that compulsory disclosure might put her at further risk. What's your view in that regard?

Mr. Hadwen: Yes, confidentiality is so beneficial to both sides in this relationship, people tell me. It's beneficial to the patient to feel free to express what their real concerns are and it's beneficial for the care provider to be able to establish an environment of confidence and also to be able to give direct, blunt and plain advice to the individual, both of them knowing that this is a confidential relationship. That has a lot of advantages in a lot of circumstances for a lot of different kinds of health care workers, being able to have that kind of relationship with the patient and to get on with doing the job that they're supposed to do for that person. Anything that corrodes that relationship is problematic, not only for doctors, but for other health care providers who have to establish rapport with people very quickly to do some specific task, perform some specific procedure—intubate, do a test, whatever it may be. You need to be able to have a quick rapport in a confidential relationship, and anything that prejudices that is an ongoing concern for health care workers.

The Chair: I'll now move to the government side. Mr. Delaney, please.

Mr. Bob Delaney (Mississauga West): Thank you very much, and also for your deputation. I'd like to explore in a couple of questions your concerns regarding retaliation from a wrongdoer if a line worker or, for example, a non-medical staffer should report a gunshot wound. Does the fear of possible threats supersede, in your mind, the benefit of getting guns off the street in the minds of those you represent?

Ms. Rout: I certainly believe, from the people I talk to who are, say, ward clerks in emergency, that they're very afraid that people will take retribution toward them by putting their name forward. They are afraid of that. From that point of view, they don't want to be part of the reporting process at all, and if that means there is a delay in dealing with the gunshot wound, then that probably would happen.

Mr. Delaney: Could you describe the basis for that fear, please?

Ms. Rout: I think just a general fear. I don't think we've had any formal threats. It's never come to that point, but I think it's just a feeling. I don't think we have any stats to actually base that on.

Mr. Delaney: How about if one spouse shoots another? Shouldn't that be reported?

Ms. Rout: I'm not saying that things shouldn't be reported. There are certainly times when things should be reported to the police. I just don't feel, and our members don't feel, that we're the ones who should be reporting it. There has to be consent given, and I think it should be coming from the establishment, whether it's the institution or the doctor. But it shouldn't be the health professional who's sitting there in the front line having to call the police as well. That's not our job and that's not part of our responsibility.

Mr. Delaney: So when you say there should be consent given, who should give that consent?

Ms. Rout: It should be the patient. That's how our colleges are set up. We can't disclose anything about a patient without patient consent.

Mr. Delaney: OK. Talk to me a little bit about the College of Nurses or other colleges, their feelings on the disclosure of the names of gunshot wound victims.

Mr. Hadwen: The particular concern that's being raised, just for a second, is that health care professionals don't want to be subject to complaints to the college that they've acted unprofessionally; in other words, that someone about whom this report is made will complain to the college that there's been a violation of confidentiality and the college will then proceed with a disciplinary investigation of the health care professional. That's a particular concern of health care professionals.

The Chair: The PC caucus, Mr. Runciman.

Mr. Runciman: I find it intriguing too, really along the lines of Mr. Delaney, what you're suggesting here. The counsel said that they'd prefer to see this bill defeated: "It should be defeated" is the exact quotation. "However, if that doesn't happen, this is the list of things we'd like to see occur in it."

I find it passing strange that you, as a professional body, feel that if someone had been engaged, for example, in a murder, in a homicide, and was wounded in the carrying out of that homicide and is in your hospital, you'd feel no obligation to the community or in terms of broader public safety with respect to a requirement to contact the police about that individual in your institution. I find that disturbing.

You've said that you want the bill defeated, but then you have other conditions, I guess, if this were confined, in terms of reporting responsibilities, to physicians. I looked at some of the examples provided by the researcher: 48 of 50 US states have mandatory reporting, and it ranges with respect to who's responsible. Some appear to be quite broad, but most seem to be confined to the physician and/or the manager or superintendent in charge. I guess I'm looking for your views. If there was an amendment to confine the reporting responsibilities to those kinds of individuals, would you be comfortable with the legislation?

Mr. Hadwen: The first comment I want to make is that OPSEU is always grateful to be referred to as a professional organization by the member.

On the issue of any amount of narrowing of the legislation, that's preferable. It's problematic legislation for the reasons that have been stated, and if the obligation to report is narrowed, both in terms of who it is that reports and about which things reports are made, that's preferable.

The last point I want to address, that the staff that this union represents are not concerned about violent crime, is not the case. The real issue is, how is it best addressed, and this bill is not the best way to do it.

Mr. Runciman: What is, then?

Mr. Hadwen: What is the best way to do it? There are all kinds of solutions.

Mr. Runciman: Just talk to the police about that.

Mr. Hadwen: Well, that's one of the conversations that's ongoing.

Ms. Rout: When you talked about how we don't care because we don't want to report, that's not what we're talking about. We went into the professions to heal people, to make people better. We didn't come into the field to report them to the police. There should be a process, if you're going to do it.

Mr. Runciman: I don't have any problem with that. I understand your position. My position was that you don't want any reporting. Your legal counsel said that the bill should be defeated. I would respect a position that said, "Look, front-line people—it's the physician and perhaps senior management who should be responsible for that." But to say, "No mandatory reporting; that's not appropriate," I have a problem with that and your obligation and sense of feeling for the community and others who might be involved.

The Chair: I'd like to thank Mr. Hadwen and Ms. Rout for their presentation from the professional organization OPSEU. I'd also just like to inform you that, should you wish to submit any written materials, the deadline for that is still on, meaning Thursday, March 3, at 12 noon. So you still have an opportunity to present any written materials, should you wish to do so.

For the committee members, I'd like to just inform you that you have a schedule for tomorrow in your package.

This committee stands adjourned until 9 a.m. on Thursday, March 3.

The committee adjourned at 1209.

CONTENTS

Wednesday 2 March 2005

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Président
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr. Michael A. Brown (Algoma–Manitoulin L)
Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)
Mr. Kevin Daniel Flynn (Oakville L)
Mr. Frank Klees (Oak Ridges PC)
Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)
Mr. Mario G. Racco (Thornhill L)
Mrs. Elizabeth Witmer (Kitchener–Waterloo PC)

Substitutions / Membres remplaçants
Mr. Garfield Dunlop (Simcoe North / Simcoe-Nord PC)
Mr. Robert W. Runciman (Leeds–Grenville PC)
Mrs. Liz Sandals (Guelph–Wellington L)

Clerk / Greffier
Mr. Katch Koch

Staff / Personnel
Ms. Margaret Drent, research officer,
Research and Information Services

JP-23

ISSN 1710-9442

Legislative Assembly of Ontario

First Session, 38th Parliament

Assemblée législative de l'Ontario

Première session, 38e législature

Official Report of Debates (Hansard)

Thursday 3 March 2005

Journal des débats (Hansard)

Jeudi 3 mars 2005

Standing committee on justice policy

Mandatory Gunshot Reporting Act, 2005

Comité permanent de la justice

Loi de 2005 sur la déclaration obligatoire des blessures par balle

Chair: Shafiq Qaadri
Clerk: Katch Koch

Président : Shafiq Qaadri
Greffier : Katch Koch

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 3 March 2005

Jeudi 3 mars 2005

The committee met at 0905 in room 228.

MANDATORY GUNSHOT REPORTING ACT, 2005

LOI DE 2005 SUR LA DÉCLARATION OBLIGATOIRE DES BLESSURES PAR BALLE

Consideration of Bill 110, An Act to require the disclosure of information to police respecting persons being treated for gunshot wounds / Projet de loi 110, Loi exigeant la divulgation à la police de renseignements en ce qui concerne les personnes traitées pour blessure par balle.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen and fellow committee members, good morning. I welcome you to the standing committee on justice policy. These are hearings regarding Bill 110, An Act to require the disclosure of information to police respecting persons being treated for gunshot wounds.

ONTARIO MEDICAL ASSOCIATION

The Chair: I would invite our first presenter of the morning, Dr. Howard Ovens of the Ontario Medical Association. A few housekeeping reminders: We'll be having two presentations back to back now and then recessing from approximately 9:40 till 11:20, when we'll have two further presentations. Dr. Ovens, please come forward and introduce yourself, stating your name clearly for the purposes of Hansard. I remind you, sir, that you and your deputant have 20 minutes in which to make your presentation. Should there be any time left over, that will be divided evenly among the various parties for questions. Please begin.

Dr. Howard Ovens: Good morning. My name is Howard Ovens. I'm an emergency physician and the director of the Schwartz-Reisman Emergency Centre at Mount Sinai Hospital here in Toronto. I'm here today representing the Ontario Medical Association in place of our president, Dr. John Rapin. With me is Barb LeBlanc, director of health policy for the OMA. I'd like to speak today in support of mandatory reporting of gunshot wounds, and I'd like to commend the Minister of Community Safety and Correctional Services for introducing the Mandatory Gunshot Reporting Act, Bill 110.

The OMA section on emergency medicine has been interested in the reporting of gunshot wounds for several years now and was a major catalyst for debate in this area with the publication of our position statement on mandatory reporting in November 2003. The OMA board of directors accepted mandatory reporting of gunshot wounds as official policy in May 2004.

The OMA section on emergency medicine paper, at the back of your handout, is the result of a significant amount of work that included an extensive literature review, the examination of mandatory reporting schemes in other jurisdictions and a survey of Ontario emergency physicians. As physicians, we have concluded from this review and our personal experience that there is a compelling case to be made for mandatory reporting of gunshot wounds in this province.

Before I comment upon Bill 110 in detail, I would like to make it clear that the OMA position deals only with the mandatory reporting of gunshot wounds. We feel that gunshot wounds are inherently different from other violent injuries, owing to their unique lethality, which includes lethality at a distance.

I will remind the committee of two recent tragic incidents, one involving a woman buying a submarine sandwich who was paralyzed by an errant bullet, and the other, a father who was watching TV with his wife and child and was killed by a stray bullet that came through the wall of their home. In both of these cases, the victims were distant from the altercations and uninvolved with them. This is unique to guns. I raise this point to underscore the fact that our support for mandatory reporting of gunshot wounds does not extend to other injuries, and we would not support an expansion of the scope of Bill 110.

Turning to the bill, I will start by noting that the draft law applies to reporting by a facility, and that facilities in this case include hospitals and organizations or institutions that will be defined by regulation. There have been concerns raised that Bill 110 might cause some patients to go to a walk-in clinic or a doctor's office instead of a hospital in order to avoid reporting. Although I expect this would be a very rare occurrence, we recommend that you consider amending the regulation-making authority under Bill 110 to include office-based practices. This will allow the government to move quickly in the event that such an expansion is perceived to be necessary in the future, while at the same time preserving today's focus on our hospitals.

We understand that there is some question about who should make the report to police, and we support the

current form of the legislation. It may not always be practical for the physician to make the phone call, and it is unreasonable to have multiple practitioners—for example, the triage nurse and the attending doctor—making duplicate reports. We believe it is appropriate to place the legislative responsibility for reporting with the facility and to allow each hospital to determine its own reporting practices through hospital policy.

Section 2 of the bill says that the disclosure to police must be made orally and as soon as possible without interfering with the person's treatment or disrupting the activities of the hospital. This is an important clause and we strongly support its intent as written. It is vitally important that reporting is timely, and that will be best accomplished by establishing an easy and efficient process. We do not want cumbersome forms. Not only are they onerous and impractical in the emergency room setting, they would impede timely reporting in cases where, for example, there is a flight risk, a hot trail that should be immediately pursued or a security risk associated with the patient.

0910

Similarly, we have concerns about clause 5(c), the section that gives the government the ability to add new reporting requirements through regulation. Our emergency departments are struggling to meet the demand for life-saving services, and every minute that a physician or nurse spends on government paperwork is a minute that patient care is delayed for not only that patient but everyone in the queue. It is unclear why this regulation-making authority is required. We recommend that it be deleted and that the reporting mechanism be detailed in the body of the legislation.

For my final comment before I close, I would like to discuss something that was an important piece of the OMA section on emergency medicine position paper but is absent from Bill 110. I speak of the need for a database to track gunshot wounds once mandatory reporting is instituted. We believe such a database would provide important information for both the health care and law enforcement sectors. The data obtained from such surveillance would support education, harm-reduction strategies and increased attention to high-risk areas. This is an important element of the reporting strategy in many US jurisdictions and we feel it is also important here in Ontario. Not only will it provide the information I just mentioned, it would be a valuable resource for other provinces that want to review our experience as they seek to deal with their own gun problems.

We think there is a need for a clear statement of political will in this regard. Otherwise, the database will be lost in the myriad of competing political priorities. We recommend that Bill 110 be amended to add the requirement for a surveillance program to complement the mandatory reporting scheme, and that this database be maintained through the public health division of the Ministry of Health and Long-Term Care.

As an emergency physician, I have seen first-hand the physical damage done by guns, but I've also seen the systemic consequences resulting from medical confidentiality rules that are rigid or misunderstood or unevenly applied. Bill 110 provides a clear and unambiguous message to hospitals and to society: All persons who arrive in the hospital with a gunshot wound will be reported to the police. The emergency department environment, by its very nature, requires quick responses, and that kind of response will be greatly facilitated by having a straightforward mandatory reporting scheme.

I urge this committee to support Bill 110.

I'd like to thank you for your attention. I'd be happy to answer committee members' questions in the remaining time.

The Chair: Thank you very much, Dr. Ovens. We have, actually, a generous amount of time left for questions. We'll start with the PC Party. We probably have about four or five minutes for each party.

Mr. Garfield Dunlop (Simcoe North): I wasn't sure what type of concerns you would have when you came in this morning. First of all, I apologize for coming in late, but I appreciate the fact that you intend to support this legislation. It's something that our party, the Progressive Conservative Party, will be supporting as well. We were basically looking for any minor amendments or those types of things that might be added that you think would improve the legislation, more than anything else. Is there anything that you can advise the committee that would be an improvement to the bill?

Dr. Ovens: I'd like to take the opportunity just to emphasize how important I personally, as well as my colleagues in the section on emergency medicine, feel the database is. We feel that in addition to whatever policing benefits may accrue from a real-time investigation of shootings, the public health benefit really depends upon the creation and availability of this information, especially given that we will be the first jurisdiction in Canada to be going this route. Other jurisdictions will be looking to our experience, and it would be very helpful to have some useful and objective data to provide to them. So I would like to emphasize how important I feel that amendment would be.

Mr. Dunlop: But as for your concerns about the actual legislation, you're pleased with the way it's drafted and the amendments. It's just the way it's implemented and the database to follow so we can track it. There's no question that other jurisdictions will be looking at Ontario, as we have looked at other jurisdictions in the United States. I believe 47 or 48 states have supporting legislation as well.

I really don't have anything else, Doctor. I just appreciate your coming this morning.

Dr. Ovens: Thank you for your support.

The Chair: Any further questions, Mr. Dunlop?

Mr. Dunlop: No, that's fine.

The Chair: I turn to the government side. You have 11 minutes, in fact.

Mrs. Liz Sandals (Guelph-Wellington): I'd like to share the time with Mr. Delaney, who has some questions too.

Thank you very much for your input. That's very helpful. I take it that your concern here is driven by the very serious nature of gunshot wounds, the escalation you see in gunshot wounds in emergency rooms, and you're interested in public safety and ultimately reducing the occurrence of that.

Dr. Ovens: Absolutely, but I want to emphasize that this is not strictly a response to urban crime and headlines in the Toronto Star of some very dramatic events recently. We're also concerned with accidental shootings, we're concerned about children who have access to guns, and we're concerned about self-inflicted and domestic shooting occurrences. These are a big issue in rural areas, where guns are even more prevalent than in the city, where we have primarily a gang problem in our headlines. I want to emphasize that it's not just a crime issue; it's a gun safety and public health issue.

Mrs. Sandals: Absolutely. I was quite alarmed by one reference to the instance where you might have a domestic shooting that might not be reported because typically the wife was intimidated and didn't want to report. That would concern me.

I wanted to ask you briefly about a couple of the amendments you've recommended, because I'm not quite sure in my own mind how they would work together. You commented that you like the fact that the facility is to report, that that would give flexibility. But then you've suggested that reporting requirements be laid out more explicitly in the bill and that a database, data collection, be done through the Ministry of Health, which would then seem to put further reporting requirements on hospitals to another body. I'm trying to find in my own mind how the simplicity and flexibility that you like wouldn't be contrary to some of the amendments you've suggested.

Dr. Ovens: First of all, thank you for the opportunity to clarify that. Imagine how emergency departments work. If a patient presents to the front desk with a gunshot wound, the physician may be occupied at that moment. We'd like to be sure that the protection of the act extends to a triage nurse who feels compelled to report for various reasons. There are hospitals in some of the smaller centres where physicians are not on-site in the emergency department 24 hours a day. We'd like to ensure that they don't have to wait for the doctor to come in to make the report, and we want the report to be made by phone.

For the purposes of data collection, there is a certain amount of data already available through health care information collection through the Canadian Institute for Health Information. Then there will be further information collected by the police. I think the challenge is to make sure that the investigative evidence that the police find that normally would not be in a health care document, such as the type of weapon which was used, the circumstance under which the shooting occurred, the location of the shooting rather than the home address of the victim, are things that the police would obtain, and we'd like them to be able to submit that to a database that could be linked to other sources of information, such as the CIHI information.

0920

Mrs. Sandals: So you're not necessarily expecting that the hospital emergency room would be supplying this. You're noting this as a broader concern in terms of information about the whole issue of gunshots.

Dr. Ovens: That's right. Some of our detractors have suggested that this information is already available, but the information in our health care charts or that could be elicited by a physician would not include some of the things I just described, such as the type of gun and ammunition, the location of the shooting etc. These will not be available to a health care document.

Mrs. Sandals: Because you're not an investigator.

Dr. Ovens: Exactly.

Mr. Bob Delaney (Mississauga West): I have one question for you, but just before that, I'd just like to note that I was intrigued by your proposal to set up a database. That's entirely consistent with the mandatory reporting of incidents, in that if you have a body of data, in order for the body of data to be complete, it must therefore capture all of the information. So thank you very much for the suggestion.

I've got a question for you that asks for your comments on some of the things that we've heard from other deputants. Some within the medical profession have raised concerns regarding the reporting of gunshot wounds. Their concerns have focused on three areas: a perception that such reporting is incompatible with patient confidentiality, a perception that such reporting exposes hospital or medical staff to possible intimidation or retaliation, and an expressed view that such reporting is not the job of medical staff. Could you please comment on these three objections from your perspective as a doctor?

Dr. Ovens: Certainly, we consider doctor-patient confidentiality a very high ideal and one which should be contravened only in important circumstances where there's an overriding public interest. We've already defined in our society a number of instances where the public health supersedes that confidentiality rule. These can include such things as unsafe driving, certain infectious diseases, many of them not actually life-threatening, as well as child abuse and a few others. Doctor-patient confidentiality is not an absolute right, and we feel that this issue meets the test of an overriding public interest. I would stress that some of the dire consequences that have been expressed by people who do not support this legislation must be interpreted within the context of a widespread misperception in many people's minds, including some sophisticated people, that this reporting already exists.

Before this issue came to public debate in the fall of 2003, most people, from subliminal effects of American media in Canada, thought that gunshot wounds were reportable, which is something we've detailed in some of our literature. As recently as two weeks ago, my daughter's high school civics teacher strenuously told her

that gunshot wounds and other foul play were reportable in Ontario, despite what my daughter tried to explain to her was going on right now. So if there are bad consequences from reporting, we should be seeing them right now in our society.

Secondly, on the issue of intimidation or retaliation, if we have discretionary reporting, which has been suggested by many people who are against us, then you have the physician bringing judgment to bear and I think more opportunity for intimidation, especially if the police are not involved. If we are merely respecting the law, as we already do—many people are very upset with us when we suggest that they'll lose their driver's licence and their ability to earn their livelihood or that their spouse may find out about their sexually transmitted disease. Emotions can run very high, yet we make those reports and we don't have the police on their way to the emergency department. So I don't see that as a major issue in this case. In fact, if anything, it's an issue in support of reporting.

Finally, in terms of our job, part of our job is obviously maintaining the public safety and protecting the public health. Although it's not our job to investigate crime, it is our job to report. As I said, in these other issues, we have a myriad of obligations to society, whether it's through the maintaining of documents and reporting of information to institutions such as CIHI or to the Ministry of Health, as well as our reporting to the Ministry of Transportation, to children's aid societies, to other authorities such as public health. This is quite consistent with our obligations in these other areas, and it doesn't really change our job description in any meaningful way that I can see.

Mr. Delaney: You said you've seen gunshot wounds up close and personal as a doctor.

Dr. Ovens: Yes.

Mr. Delaney: Have you ever had any trouble, ever been threatened or intimidated?

Dr. Ovens: No, I've not, certainly not related to gunshot wounds. I have had a couple of cases that I described in one of our publications in which the patient asked me not to report. I was very uneasy about that request.

Mr. Delaney: In essence, you're saying that if reporting is mandatory and judgment doesn't have to be exercised, you've essentially made it easier for the physician or the medical staff to comply.

Dr. Ovens: Absolutely.

The Chair: Thank you, Dr. Ovens and Ms. LeBlanc, for your testimony.

POLICE ASSOCIATION OF ONTARIO

The Chair: I would now invite Mr. Miller of the Police Association of Ontario to please come forward. Welcome back. I believe you're a veteran of the pit bull committee hearings as well. I remind you that you have 20 minutes in which to present. Once again, should there be any time left over, we'll divide it evenly amongst the parties. Please state your name clearly for Hansard.

Mr. Bruce Miller: Good morning. My name is Bruce Miller and I'm the chief administrative officer for the Police Association of Ontario. I was also a front-line police officer for over 20 years prior to taking on my current responsibilities.

We appreciate the opportunity to address the committee today and would like to thank all its members for their support and continuing efforts for safe communities.

The Police Association of Ontario is a professional organization representing over 21,000 police and civilian members from 63 police associations across the province. We've included further information on our organization in our brief. We are here today to speak in support of Bill 110 and mandatory reporting of gunshots. It is unfortunate that we, as a society, have reached a point where this type of legislation is needed.

The first observation is that we've become far too litigious. Physicians and health care facilities routinely reported gunshot wounds to police in the past. However, that has changed in some jurisdictions, apparently due to liability concerns, and that change has created a real need for this legislation.

The streets of Ontario have also changed. I remember an incident shortly after I started my career as a police officer with the London Police Service back in 1979. I stopped a car driven by a petty criminal and found a loaded handgun under the front seat. The handgun was nothing compared to the sophisticated weapons our officers deal with today. It was badly rusted and quite dated. However, it was a handgun and everybody wanted to see it when I arrived at the police station. The arrest was even covered by the local media.

Fast-forward to today, and the seizure of yet another handgun evokes little or no interest. Gun violence has become far too commonplace. Senseless shootings dominate newscasts. Monday mornings bring the media's tally of gun violence for the weekend in far too many communities across this province.

Guns are now an accepted part of street culture. Guns and gangs go hand in hand. Both were almost unheard of when I started my career. Guns are also a reality of the illegal drug trade. Firearms are routinely seized by police officers conducting drug search warrants. A drug search warrant with no weapon seized is the exception today. I don't think anybody could have predicted the changes that occurred over the past 26 years since I was sworn in as a police officer.

We need to do more to fight gun violence. We need to make people accountable and to send a clear message that criminal activity associated with firearms will not be tolerated and will result in significant jail sentences, in real prisons and without lax parole eligibility provisions.

We need to do everything we can to fight gun violence. Bill 110 will assist police in combating this growing epidemic. At some point, the right to privacy has to be balanced with the need to protect society.

The PAO appreciates that doctors and nurses have a duty of care that, to some, seems inconsistent with reporting gunshot wounds. While respecting the role of doctors, nurses and hospital staff to care for all those who require medical attention, this shouldn't be done at the expense of community safety. We believe that reporting gunshot wounds does not compromise or impair their ability to provide medical care.

This legislation will enable police officers to investigate all incidents, gather intelligence, help to hold persons accountable, and hopefully prevent future acts of violence. We would ask you to support the legislation.

In closing, we'd like to thank the members of the committee for the opportunity to appear here today. We greatly appreciate your interest in community safety and would be pleased to answer any questions you may have.

The Chair: Thank you, Mr Miller. We have about five minutes per party, and we'll start with the government side.

0930

Mrs. Sandals: I just wanted to pursue the idea that historically people have tended to report voluntarily. If I'm reading between the lines in your presentation, I'm guessing there are a lot of jurisdictions in which that still happens. Is that correct?

Mr. Miller: Our information is that the vast majority of jurisdictions in Ontario do report gunshots. This issue seems to have grown out of the Toronto area.

Mrs. Sandals: So it would be fair to say that if there were problems from the point of view of hospitals in terms of threats—and we've heard from hospital workers who are concerned about liability, all these issues—in fact there is a fair body of experience in Ontario with reporting gunshot wounds already, because in significant chunks of the province that's the practice anyway.

Mr. Miller: I can't remember any threats related to reporting. I think a lot of the criminal element thought it would be reported in any event. I can tell you that a lot of times—and I've worked closely with emergency staff over the years and really was privileged to see the wonderful work they do in emergency rooms with these cases. But there's also a safety aspect for the hospitals involved, for the staff, for the people in the waiting rooms, because certainly we've seen incidents where retaliation has been attempted or has taken place right in emergency rooms. I think that's why we see the armed guards in a lot of American cities now. There have been shootings. I know certainly with organized crime members and things of that nature, and sometimes domestic violence, there is a big concern that somebody is going to try and repeat the same incident. It puts emergency staff at risk and it puts the public waiting in those rooms at risk as well. I think that was a good reason why the reporting was done.

Mrs. Sandals: So, from your experience, there may sometimes be problems with people who want to finish the job, if I can put it that way.

Mr. Miller: The concern is always there in many cases.

Mrs. Sandals: And making sure the police are always aware would in fact provide a greater level of security for hospital staff because it's an automatic that they will report, and then the police will be following up, so they don't need to worry so much about security issues that that particular patient may attract.

Mr. Miller: Certainly there were a lot of security concerns raised by hospital staff with certain patients, and rightfully so.

Mrs. Sandals: Thank you very much. It's helpful to get that perspective.

The Chair: Any other questions from the government side? Mr. Brown or Mr. Delaney?

Mr. Michael A. Brown (Algoma-Manitoulin): First of all, I'd like to say how much we appreciate your being here today to get your point of view.

I've been trying in my own head to understand the scope of this problem. Just for the help of the committee, maybe you could outline the increase in gunshot incidents in the province, and particularly here in Toronto. You allude to that. I'm sure your organization keeps very careful statistics on that. It would be helpful, as we make our judgments on this, that we have some sense of the statistics that are involved.

Mr. Miller: We tried to get some statistics, but statistics are so misleading when we're dealing with gun crimes. I mean, we have issues with the gun registry which can throw off the statistics. In terms of gun crimes, if we're talking actual gunshots and incidents, I did some checking last week before appearing at the committee and just couldn't find any hard statistics that were really relevant, because the way Statistics Canada tracks so many crimes, they associate it to weapons, which can be a rather misleading statistic. I think the best judge is just what we see in today's paper. Certainly from the front-line people, we never saw these incidents years ago related to gun crimes. It's an epidemic out there, but we couldn't get any hard-and-fast statistics or find a database that helped us.

Mr. Brown: That in itself worries me, that we don't keep track in some way. We just had a physician here who said that one of the things they needed to do in reporting was to keep some statistics so there was some good, hard information.

Mr. Miller: One of the things too is that gun crimes are a relatively new phenomenon that we've just seen in the last 10 years where it has exploded. Statistics Canada never tracked those; they were tracked in a sort of grab-bag section. That's why we don't have the statistics available.

The Chair: An efficient question, Mr Delaney?

Mr. Delaney: I always ask efficient questions, Mr Chair.

First of all, I want to thank you for coming in, because you've brought a very interesting perspective to the debate. It's an operational perspective, because you've driven the route in the car. From your experience as a police officer, when a report of a gunshot has taken place, what typically happens? In other words, from our

perspective in dealing with the bill, what activities could we expect police officers to take once a report has come in? That's the first part. The second part is that you've talked about StatsCan and the dearth of information. From your extemporaneous design, what type of information would be appropriate for you to capture in a gunshot wound incident?

Mr. Miller: To the second question first, we'd have to look at that whole question of a database, because some of the items that we would want to see tracked, such as age and other things like weapons used, would not be the same areas that the medical community would want tracked. We might run into privacy problems there as well. If there was a move to establish a database—and we realize that money is tight and we always have to look at things in terms of priorities—I think we need to sit down and decide what would be useful.

In regard to the other question, if a gunshot is reported by a hospital—we'll do the hospital—the first concern would be that patient at the hospital, to make sure there are no security problems there. Then it would be to start the investigation and try to secure the scene where the shooting occurred.

Certainly timely reporting is very important. We have no concerns with the reporting mechanism now. We're sure that hospitals can create policies. I've been in the emergency rooms. I know how busy the doctors and the triage nurses are. Every hospital is different, but everything is charted and I'm sure there is a mechanism for local hospitals to report it right away.

The Chair: We now turn to the PC side.

Mr. Dunlop: Thanks very much, Bruce, Mr. Miller, for being here today and for your presentation. A quick comment on the data: We keep asking our professional people in this province for more data. If you talk to doctors and nurses now, to schoolteachers, they'll tell you that so much of their time is already spent providing paperwork to authorities as part of their job. It's nice to keep asking for more data on all these specific areas, but it does take away from their professional work.

On Bill 110, we're specifically referring to gunshot wounds at this time. My question to you is, what about other kinds of wounds that people have, like a knife wound, a stab, or where somebody has obviously been beaten badly by some kind of weapon? Where do you think we should go from this point? Is that not probably the next step with legislation like this?

Mr. Miller: I'm only speaking from a policing perspective and from a community safety perspective, but obviously there would be some benefits to mandatory reporting of knife wounds and things like that. It's a difficult issue, because you run into accidental wounds and things of that nature. If a person is incapacitated with head injuries, something of that nature, there's probably a need to look at mandatory reporting just because, in some cases, a person is unable to report that injury himself or herself.

Mr. Dunlop: I guess that's my concern. Will that be another piece of legislation down the road, or should we work on that now? That's why I was asking the Ontario Medical Association if there should be amendments to the legislation that would add some of these other things. I'm thinking of a knife wound. If you're going to report a gunshot wound, why wouldn't you report a knife wound? Or is that another piece of legislation for another day? That's my question to you and that's my question to the government members. Why wouldn't we take a look at that?

Mr. Miller: The one problem with knife wounds is that you always have to ensure that they weren't accidental.

Mr. Dunlop: Yes, but the same thing could happen with a gunshot wound, couldn't it? You could blow your kneecap off or something.

Mr. Miller: Fair enough, but there are so many knife wounds in an emergency room in terms of cuts and things like that that have been stitched up. In a best-case world from a policing perspective, we would like to see knife wounds reported. We would like to see very serious assaults reported, especially if a person is incapacitated. I can remember a case where somebody was unconscious for two days and it wasn't until they came to that it was reported. But as I said before, most of these are reported across the province. It's just unfortunate that times change and this sort of legislation is needed.

Just one more quick thing on knives: It is certainly be something we'd have to sit down and discuss and look at some parameters for, but there would be value in it.

Mr. Dunlop: I appreciate the opportunity.

Mr. Mario G. Racco (Thornhill): Do we still have some time?

The Chair: Sure. Please go ahead.

Mr. Racco: I am interested in hearing more about what Mr. Dunlop asked. I'm one of those who believe that any criminal activity must be reported. I really don't sympathize with people who look for excuses not to do so, because if there is a problem, it should be reported and addressed. I think that's basically what you're saying.

When you make reference to a knife and that the cut could be done by the same person, it's not a criminal act. I know there are no statistics. What percentage of people go to the hospital with a cut that maybe is an error instead of it being a criminal act? Any idea?

Mr Miller: For self-inflicted knife wounds, the police are usually involved, because there's a concern for the patient and the security risk. It would be wonderful if we could just make legislation where common sense prevails, because—

Laughter.

Mr. Miller: It's a real challenge, I know. So many times the wounds we see associated with knife attacks are so self-evident, as opposed to the cut that needs a couple of stitches because someone's knife slipped in the kitchen or while cleaning fish or whatever. But it's something we'd be more than willing to explore, and there would be merit in it.

Mr. Racco: I think we should look at those realities. An unwanted cut is a criminal activity, and the police must know because that's only the first potential step to something major that can happen. Therefore, I hope that at least your organization will potentially look at suggesting that we go a little further in this legislation or in future legislation.

The Chair: Thank you, Mr Miller, from the Police Association of Ontario. Committee members, I advise you that we are recessed till 11:20.

The committee recessed from 0944 to 1120.

The Chair: I'd like to welcome the committee members back, as well as the individuals who will be bringing deputations to the standing committee on justice policy on Bill 110, An Act to require the disclosure of information to police respecting persons being treated for gunshot wounds.

ONTARIO HOSPITAL ASSOCIATION

The Chair: I'd now like to invite the first presenters, from the Ontario Hospital Association. Please introduce yourselves for the purposes of Hansard. I remind you that you have approximately 20 minutes in which to offer your remarks. If there's any time left for questions, we will divide it evenly between the parties, now that they are in fact here. Please commence.

Ms. Hilary Short: Thank you for the opportunity to be here. I am Hilary Short. I am president and CEO of the Ontario Hospital Association. With me are Mary Gavel, director of risk management and patient relations at Rouge Valley Health System, and Elizabeth Carlton, senior adviser, legislation and policy at the OHA. We are pleased to be able to appear before you this morning on Bill 110, the Mandatory Gunshot Reporting Act.

Given the importance of this issue for hospitals, the OHA has consulted broadly, seeking input from its advisory committees and conducting a survey of members. Informed by this input, we welcome the opportunity to provide our comments and recommendations respecting the bill.

As you can appreciate, the issue of reporting to the police has long been a challenging one for hospitals, as it strikes at the heart of a fundamental tenet of care, that being the protection of patient confidentiality. Hospitals face a dilemma in wanting to ensure that the hospital is a place of refuge and care for patients, while at the same time doing what is necessary to enhance public safety. As a result, there are, understandably, differing and strongly held views on the subject. In offering our thoughts on the legislation, we would like to acknowledge these divergent views and the conviction with which they are held.

While I cannot say that all hospitals universally support mandatory reporting, it does appear that there is general agreement that mandatory reporting would serve to clarify responsibilities and avoid the need for individual health care providers to decide when to report and/or collaborate in a police investigation.

In accordance with the common law duty to warn, hospitals have traditionally reported gunshot wounds when there is a risk of serious harm to an individual. Indeed, this practice was codified in the new privacy legislation, the Personal Health Information Protection Act, 2004, passed last year. This legislation permits disclosure if it "is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons." As you can well imagine, making this determination of risk is not easy.

As a result, many hospitals appreciate the fact that Bill 110 would, at least for cases of gunshot wounds, relieve health care providers of the responsibility of making a determination as to whether someone was at risk and whether a report should be made. However, it must be acknowledged that a number of hospitals do not believe that the need for mandatory reporting outweighs the need to safeguard patient confidentiality. It must be said that those with a long history of serving the mental health community have expressed great reservation about the lack of any exemption for self-inflicted wounds, as it is felt that police involvement may further stigmatize those injured as a result of a suicide attempt. We expect that they will be making submissions on this issue and would encourage the committee to consider these carefully.

Those hospitals which are supportive of mandatory reporting have significant concerns with the proposed framework for reporting set out in Bill 110, believing that the bill could be improved in this regard. I will now ask Mary Gavel to speak to these issues from the front lines.

Ms. Mary Gavel: Thank you, Hilary. While we have noted a number of suggested amendments in our written submission, I would like to take this time to focus on a couple of important areas in which the legislation could be strengthened.

The first issue relates to the somewhat narrow application of the act. By virtue of the definition of "facility" found in section 1, the legislation applies to hospitals under the Public Hospitals Act and "an organization or institution that provides health care services and belongs to a prescribed class." Although the bill clearly states that regulations may be made prescribing these other organizations or institutions, we would suggest that not all should be determined by way of regulation. We suggest that it would make sense to include physician offices, after-hours clinics and other community health care centres within the ambit of the legislation and would encourage you to engage their representatives in further discussion on this issue.

The concern is that, in the event that regulations are not enacted, individuals may elect to seek treatment in facilities other than hospitals in order to evade police detection. Further, with recent health care transformation initiatives launched by this government, concerted efforts are being made to move care into communities and, where possible, away from institutions such as hospitals. In such a climate, we believe it is only logical to ensure that facilities offering primary care be covered by the legislation. Similarly, given that the purpose of the

legislation is to enhance public safety, there is some question as to why only gunshot wounds are reportable and not all injuries relating to violence, with stab wounds being an obvious example.

Another area that we would urge the committee to examine carefully is how gunshot wounds are reported. We think that the legislation needs to be clear about precisely who should be responsible for reporting. Bill 110 simply states that the "facility" has to report, which leaves open to interpretation just which individual within the facility will be making the report. While this is certainly a matter that could be determined by each hospital, this would require the development of facility-level policies and guidelines. Further, we would suggest that identifying the individual responsible for reporting would also be consistent with similar mandatory reporting provisions, such as in the case of child abuse. In the interests of facilitating a more even uptake and application of the law, we would therefore recommend that the individual responsible for reporting be clearly identified in the legislation.

In polling its members, OHA has found that hospitals believe the most appropriate person would be the attending physician, given their role in diagnosing the patient. However, recognizing that this may not be practical in every instance given workload and patient volumes, we acknowledge that from time to time this responsibility might need to be delegated to other health care professionals.

We also note that the legislation is silent on the question of retention and/or disclosure of the police record. Given the potential impact on an individual's future employment or other activities, we would urge the committee to give serious consideration to this matter and provide for safeguards in this regard.

Finally, because of the controversial nature of this bill and the potential for unintended consequences, we suggest that it would be advisable to mandate a review of the legislation after a period of three years.

These are critical issues that must be addressed by this committee before the bill is referred back to the House. The legislation will have an enormous impact on hospitals and we therefore believe it is vitally important to get it right.

Once again, thank you for the opportunity to appear before you. We would welcome any questions you may have.

1130

The Chair: Thank you very much for your deputation. We will have quite a bit of time for questions. We'll start with the NDP caucus.

Mr. Peter Kormos (Niagara Centre): Thank you kindly. Mr. Runciman is going to read this; I'm sure he'll be comforted, because you join him in some of the proposals he made yesterday.

I've been listening to and reading not only your submission but also others. I'm interested in the matter of identifying the person who's going to be doing the reporting. I learn, in addition to what you say, that physicians, for instance, already have—I want clarification, if you can; maybe somebody else will have to provide it—a duty or an opportunity to report, if they believe that that person poses a danger. I don't know whether it's a duty or simply that they are released from their requirement of confidentiality if they believe so. Similarly, the Ontario College of Nurses, which has not supported Bill 110, talks about nurses having, again, this inherent ability to report when they believe that there is a risk being posed.

What I'm interested in is, which of the hospital staff people are going to submit themselves as potential witnesses, by virtue of doing the reporting, and spend three and four days sitting in a crummy hall room down at Mimico—have you ever been to the Mimico provincial court? Probably not.

Ms. Short: No.

Mr. Kormos: It's a horrid place.

Mr. Dunlop: Peter's been there.

Mr. Kormos: I've spent a lot of time there; I admit that readily.

Which doctor is going to want to sit there in the midst of, let's say, a biker gang trial or a drug dealer trial, being eyeballed by biker gang members, knowing that they're a witness against the interests of the accused? Which health professional should have to be submitted to that: the doctor, or a nurse who is part of a profession that's been under attack and short-staffed, and who is hard-pressed to keep up with his or her responsibilities as they are now?

Ms. Short: I'll start. It's under common law that if they believe that someone is endangered by the result of something, they are required to report that. That was codified in the new privacy legislation.

Mr. Kormos: You made reference to that.

Ms. Short: I'm not sure of the legal processes that happen after that, but we're saying that in terms of the hospital, you really have to diagnose or know that someone has been injured by a gunshot wound. Therefore, we think that within the hospital, the responsibility for reporting should primarily be the attending physician's. But under some circumstances they may need to delegate that, as with other medical acts, to someone else.

Mr. Kormos: So in your view, he or she is the one who gets to cool their heels for three and four days at a time in provincial court during a preliminary hearing?

Ms. Short: Yes. I guess this is where law and medicine come together. Under the health professions legislation, it's only physicians who can diagnose, and you have to diagnose or be told that this is the result of an accident. Mary can say that in practical terms, obviously sometimes you diagnose it, or the patient will tell the physician under certain circumstances that it's a gunshot wound.

Mr. Kormos: The other big area of concern is attempted suicide. Obviously, successful suicides are irrelevant in this context. Attempted suicide is no longer a crime. I'm concerned, and so are some of the participants, about the fact that a person who has done an

attempted suicide—and I've seen the stats for gunshot admissions into emergency wards: accidental discharge, self-inflicted, and then, quite frankly, the criminal part of it is not the greatest part. So what about the person who has attempted suicide? It seems to me that the last thing they need is police intervention.

Ms. Gavel: And our member hospitals did raise that concern as well.

Mr. Kormos: Should there be discretion, then, on the part of the reporting person to exclude reporting an attempted suicide, or somebody who has been cleaning their rifle—it happens—and who shoots themselves literally in the foot?

Ms. Short: This is one of the difficulties with the legislation. This is where the differences of opinion come in. Many health care professionals feel that the hospital is a place where your prime concern is caring for the individual who comes in, regardless of what reason they are brought in, and that confidentiality supersedes everything else. There are other aspects to this bill, as we say, that relate to public safety. This is the grey area. Within our own membership, there are considerable differences of opinion about this. On balance, if you live in Toronto and you see the issues related to guns and gangs and so on, hospitals want to play their role in that.

But there are some very difficult issues. We know that the mental health community is very concerned about this piece of it, not further stigmatizing people with mental illness who may be trying to take their own lives. About accidents, again there's a bit of a grey area.

The Chair: Thank you very much to the NDP caucus. I will now move to the government side.

Mr. Racco: I have a simple question. You make the statement on page 4 that gunshots should be reported. Who, in your opinion, should do the reporting? Could you give us some recommendations on that?

Ms. Gavel: I think the member hospitals felt that it needed to be the attending physician who would make that diagnosis. When the person presents to the emergency department in a hospital, they don't always present stating, "I've been shot by a gun." They present with a number of other complaints. As Hilary said, the physician is the only one who can make a diagnosis that it was a gunshot wound. The member hospitals felt it was appropriate to delegate to another health care professional to actually make that phone call, but the physician clearly needs to be the one making the determination that it's a gunshot wound.

Ms. Short: The thing you have to remember too is that it may not be obvious that someone's been shot. You may be grazed or you may be severely injured with a bullet. But it does require diagnosis or it does require the patient to tell the health care professional.

Ms. Gavel: And they don't usually present, unless it's very obvious, stating, "I've been shot by a gun."

Mrs. Sandals: I'd like to follow up on this whole issue of who reports, because we've had quite conflicting evidence. I don't think anybody would dispute that it's going to be the physician who makes the diagnosis. I'm wondering why, when you're managing a busy emergency room, you would be concerned that the physician is actually the person to make the call. What we're hearing from the emergency room physicians is that they are quite comfortable with each local hospital being able to develop its own protocol for how that would work. The emergency room physicians are saying that in some cases, once they've made the diagnosis, someone else could be delegated to make the call, whereas if you put in the legislation explicitly that the physician is required to make the call, then you're taking the physician away not from the responsibility of making the diagnosis but from treating that patient or other patients.

Ms. Short: That's why we're suggesting that hospitals can develop their own policies for delegation, because it's a common procedure in hospitals to delegate something to another health care professional. In some cases, they delegate medical acts. We're saying that the physician is the one responsible for diagnosis; hospitals can then develop their own policies and procedures for delegation. That's what we're saying.

Mrs. Sandals: But that's my understanding of what the proposed legislation's wording allows.

Ms. Elizabeth Carlton: The legislation, as we read it, simply states that the facility must report. It's not identifying a particular professional within that facility who has that responsibility. In terms of consistent uptake across the board, it would make sense to say that the attending physician should report and, where necessary, delegate that act.

Mrs. Sandals: If we can go to the Child and Family Services Act, an act with which I have a fair degree of familiarity, there are a number of primary caregivers and people who would interact with children. It cites teachers and so on. My understanding of that act is that because teachers are named, physicians are named and so forth, the legal advice that school boards have received is that the the teacher does not have the legal authority to delegate because they are specifically named. To draw a parallel, it would seem to me that what you're suggesting would get you into the situation where if the physician is specifically named, you might in fact have trouble with delegation.

1140

Ms. Carlton: You could also add in that provision words to the effect that "and where necessary, his or her delegate," so it's clearly expressed in the legislation that this can be delegated, which I don't think is the case in the Child and Family Services Act.

Ms. Gavel: Maybe something else in terms of the language is to have the physician making the determination, and then the actual call to report could be delegated once the physician has diagnosed or made the determination that it's a gunshot wound.

Mrs. Sandals: If I can summarize, I think I'm hearing that the physician needs to diagnose and then there can be some flexibility around who makes the call.

Ms. Short: And just to emphasize that within a hospital setting, delegation is an accepted and common

practice for lots of things. Hospitals can delegate medical acts to nurses or other health care professionals provided it's spelled out and they have policies for how it's done. Unlike, say, in a school, delegation is a very common activity in hospitals.

The Chair: I now move to the PC caucus.

Mr. Dunlop: First of all, thank you very much for coming. I know it's a bill that we have a lot of different opinions about. In terms of the legislation, I was very interested that you mentioned that just gunshot wounds are reportable under the bill. When Bob Runciman introduced a resolution in December 2003, it called for knife injuries as well under that resolution, and I would have hoped this bill would have included that. How would you feel about amendments being made to the bill that would include other types of wounds as well? Maybe you haven't even had a chance to discuss that yet.

Ms. Short: We've given a lot of thought to it, and I'll let my colleagues talk.

Ms. Carlton: When we surveyed members last summer, there was some support for including stab wounds. That issue has also been a challenging one for hospitals for a long time. Initially, when there was a movement afoot to draft something, there was support for including stab wounds as well. I can't say there is universal endorsement of that, but I think it is an important issue for the committee to consider, going forward.

Mr. Dunlop: Why I feel that our caucus would probably support that is that it's my understanding that, by and large, there are far more knife wounds or knife injuries than there are gunshot wounds, and I thought it would be a good opportunity to clean the legislation up once and for all. Maybe it wouldn't clean it up once and for all, but it might make it a little more all-encompassing.

Ms. Gavel: I think that was raised, because if you're looking at it from a public safety perspective, absolutely. There are gunshot wounds, but stab wounds are probably a lot more prevalent.

Ms. Short: I'll just add, though, that this is where the difficulty comes in. You've got gunshot wounds, you've got stab wounds, and there are many other kinds of criminal activity which result in violence and people being taken to hospital, and it's difficult to be all-encompassing. This is some of the concern of health care professionals: How far do you go in asking health care professionals to report on the reasons people are being brought to hospital and making judgments about elder abuse or violence against women and so on? I guess that's the issue. If you do gunshot and knife wounds, how much further?

Mr. Dunlop: Well, maybe the next thing is a bow and arrow or something like that.

Ms. Gavel: Also, with the stab wounds as well, what about the accidental or the self-inflicted?

Mr. Dunlop: Absolutely. A guy cuts his hand skinning a fish or something like that.

The Chair: I'd like to thank Ms. Short, Ms. Gavel and Ms. Carlton from the Ontario Hospital Association for their deputation.

REGISTERED NURSES ASSOCIATION OF ONTARIO

The Chair: I would now invite Ms. Irmajean Bajnok of the RNAO to come forward, if she is here. If you have any written materials, please feel free to offer them to the clerk. We'll have them distributed for you. I remind you that you have approximately 20 minutes in which to offer your remarks and the time remaining will be divided evenly among the various parties. Please identify yourself by name for Hansard recording purposes and please commence.

Ms. Irmajean Bajnok: I'm Irmajean Bajnok and I am the acting executive director of the Registered Nurses Association of Ontario. I believe you are receiving a copy of our submission. I want to say how pleased we are to have the opportunity to address this group. I want to also introduce Sheila Block, who is with me today. She is the director of nursing and health policy at RNAO.

RNAO, as many of you know, is the professional association for registered nurses in the province. They practise in all roles and sectors across the province. Our mandate is to advocate for healthy public policy and for the role of registered nurses in enhancing the health of Ontario residents. We welcome this opportunity to present our views on Bill 110 to the standing committee on justice policy.

We understand that the government has introduced Bill 110 out of a concern for public safety, and that is to be applauded. However, we cannot support this legislation, which we feel would place an additional obligation on health care professionals to report to police when a person is treated for a gunshot wound.

Let's be clear: Most of the time, it will be a registered nurse who will be obligated to report. RNAO believes this obligation will have a negative impact on the confidentiality aspect of the therapeutic relationship between registered nurses and patients. The notion of confidentiality is essential to nurses gaining and maintaining the trust of the patient, and a critical factor in successful care and treatment. If registered nurses must act as an extension of law enforcement, it will have a chilling effect not only on patients with gunshot wounds but, we believe, also on other vulnerable clients.

We are concerned that mandatory reporting of gunshot wounds could deter people with such injuries from seeking treatment. This could further jeopardize the safety of such individuals as abused women, families and their children, and teens. This could also spill over to other patients who may be less inclined to seek the care they need or provide information crucial to their recovery if they know this will be reported.

We believe public safety concerns in regard to gunshot wounds are currently very well addressed by the standards of nursing practice set out by the College of

Nurses of Ontario, the regulatory body for all nurses in this province. These standards already provide for voluntary, rather than mandatory, reporting. They allow registered nurses to use their professional judgment to decide when it is in the public interest to report gunshot wound victims and in fact many other types of wounds and injuries. If safety concerns outweigh those related to patient confidentiality, nurses can and indeed are obligated to report any treatment or health care condition, including gunshot wounds.

Furthermore, we believe that mandatory reporting will not be an effective policy to increase firearm safety. Evidence indicates that almost two thirds of gunshot wounds that require hospital admission were either accidental or self-inflicted. Again, as many of you know, 78% of deaths from gunshot wounds were related to suicidal situations. As a result, RNAO firmly believes that a focus on prevention through firearm safety education and mental health services would be a more effective focus for policy in this regard. In rural areas where hunting is more widespread, mandatory reporting could divert scarce health care resources to reporting accidental injuries and away from more productive use of time on the part of both registered nurses and police officers.

1150

Finally, we believe that the most effective policies to reduce violent crimes are those associated with the social determinants of health: those that reduce discrimination and inequality and those that address nutrition, affordable housing and child care.

Confidentiality is a key principle of health care and registered nurse practice. RNAO believes that current standards of practice adequately address the needed trade-offs between public safety and confidentiality. Furthermore, we do not believe that mandatory reporting is the most effective policy tool to reduce firearm-related injuries. We therefore strongly urge this committee to recommend withdrawal and reconsideration of Bill 110.

In conclusion, this position is fully supported by all of the province's major nursing organizations: the College of Nurses of Ontario, the Ontario Nurses' Association, and the Registered Nurses Association of Ontario.

Thank you once again for the opportunity to make this presentation. We are happy to answer questions.

The Chair: Thank you very much for your deputation. We'll start with the PC caucus.

Mr. Dunlop: I understand that you're against the legislation. I'm curious about whether you've had an opportunity to look at your colleagues south of the border, where I believe 45 or 46 of the states have legislation similar to what the government is trying to introduce right now. I wonder if you've had any feedback from those areas.

Ms. Bajnok: In fact, one of the things we did look at was the evidence in terms of the result of such reporting on changes in crime behaviour. We certainly could not find that kind of information. That's what we were looking at—the impact of this legislation on violence—because we feel there are the concerns about confidentiality but also about public policy and use of resources.

Mr. Dunlop: That's the only question I had, Mr. Chair.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you, both of you. This is fascinating. I underlined the part where you talked about the discretionary power of a nurse to report when, in his or her judgment, it's in the public interest to do so. We're similarly told that doctors have that discretion available to them. I read the Police Association of Ontario's submission this morning. They of course are advocating for this, but they didn't make reference, at least in their written submission, to a single instance where they, for instance, missed out on an illegal shooting. Maybe the solution is simply educating everybody about—because nurses are well trained about their discretionary ability to report, aren't they?

Ms. Bajnok: Nurses are certainly aware of the standards of practice from the College of Nurses under which they are all obligated to practise. I would just suggest that it is an obligation, an ethical obligation, to do that reporting.

Mr. Kormos: I'm concerned about the person who attempts suicide. Police do what police do, and I understand that. They know they're not social workers, and they abhor being thrust into situations where, for instance, their role is not the useful role. In the case of an attempted suicide, it seems to me that the last thing we should have an interest in is getting the police involved. That patient warrants other things. And where it's clearly an accident—you heard me refer to the proverbial circumstance where you shoot yourself in the foot while you're cleaning your firearm.

Let me put it this way. Some people are going to try to concoct the image of a multiple murderer getting shot in the course of a mass murder—I don't want to stigmatize, but Tony Soprano, you know what I mean?—showing up at a hospital with a gunshot wound, and somehow nurses and doctors are all going to be oblivious to the fact that there was a mass murder just down the street and that this guy happens to show up in the hospital within 30 minutes of the report of people being shot. Somebody's going to try to create the impression that nurses or doctors wouldn't report that to the police. Is that proposition silly?

Ms. Bajnok: Well, it's a hypothetical situation. I'd go back to the key aspect of the standards, which clearly states that if nurses feel that anyone who presents themselves to the health care system is at risk of endangering the public, they are obligated to report that. There is a process where they discuss that with the team and report that. I would have to say that my view is that nurses understand the standards of practice and do follow them.

Mr. Kormos: It makes me wonder whether this bill isn't just a cheap appeal to the overall and overriding fear of guns and proliferation of guns in crime, when in fact all of the processes we need to address this seem to be in place already. I have regard for what you say. Is this just

the Liberals trying to out-law-and-order the Tories? Monte Kwinter and Bob Runciman will arm-wrestle over who can be more law-and-order on this issue. They will mud-fight, if need be, to see who'll be more law-and-order. Mark my words. That'll be a show to see.

Ms. Bajnok: We also feel, though, that if you want to look at where you put your efforts around public policy in relation to violence, there are many other places.

Mr. Kormos: You made submissions in that respect. I appreciate that.

The Chair: Thank you, Mr. Kormos. I'm sure the committee looks forward to that event.

I turn to the government caucus. You have approximately five minutes.

Mr. Delaney: Personally, I look forward to seeing Bob Runciman mud-fight.

You state that the proposed mandatory reporting of gunshot wounds will affect the "confidentiality aspect of the therapeutic relationship," to use your own words. Yet the Canadian Medical Association's code of ethics requires physicians to "respect the patient's right to confidentiality except when this right conflicts with your responsibility to the law, or when maintenance of confidentiality would result in a significant risk of substantial harm to others or the patient." The Ontario Medical Association endorses the mandatory reporting aspect of the bill. In the United States, similar statutes exist in Vermont, New York, Minnesota, Florida and Texas. Could you please explain the discrepancy?

Ms. Bajnok: Our code of ethics and our standards of practice suggest the very same thing, that when concern for public safety overrides the concern for privacy, one is obligated to report. We're saying that anything that means a blanket reporting truly interferes with that, and we feel it will have negative consequences for those individuals who do not put the public safety at risk. That's when you're looking at endangering the nurse-patient relationship and in fact perhaps having the effect that individuals will not come for care and treatment. Do you understand what I'm saying is the difference?

Mr. Delaney: Well, I'm having a hard time visualizing a concrete example of it.

Ms. Bajnok: It's in a situation where you're attempting to commit suicide or you've been cleaning your gun and you have a gunshot wound. Because of the legislation, that information has to be reported. We are saying that that interferes with the confidentiality; there is no public safety risk. It's in those cases where the risk to public safety overrides the risk for confidentiality that the nurse is obligated to report; otherwise, no.

Mrs. Sandals: In your brief and in your testimony, you're talking about the fear that if this legislation is put in place, it will interfere with the patient-nurse relationship, that it will lead to instances of people failing to seek treatment. However, we're told by the police association that the reporting relationship required in this act is the practice already in most of the province. Given that this is already the practice, although not the legal requirement, in most of the province, do you already have any instances where reporting has interfered with the patient-nurse relationship or where there are actual incidents of failure to seek treatment? We are told that in most of the province, this is already the practice.

1200

Ms. Bajnok: I'm not aware that that is already the practice. My understanding, certainly from our membership, is that nurses do look at the reporting related to a threat to public safety.

Mrs. Sandals: But in that we're in agreement that there is already, in most of Ontario, a lot of reporting going on, are there any actual instances where the reporting has led to harm to a nurse, where there have been actual instances of interference with the treatment relationship? This all seems to be presented in terms of, "We're afraid that this will happen."

Ms. Sheila Block: If I can clarify, when you're saying what is happening already, it's already happening under the regulatory regime of the college standards. Those standards would just have RNs reporting when they saw a perception of danger to public safety. The situation where RNs don't think there is that danger to public safety, and therefore they are not required to report, hasn't come up yet.

I also think it's very different when you have legislation, and the media associated with that, that says, "All gunshot wounds need to be reported." To try to compare the situation currently, under a regime that we think is adequate, isn't necessarily the best kind of comparison to what could occur in the future.

Mrs. Sandals: Do I have a few minutes, or are we out of time?

The Chair: Mr. Racco also asked for a question.

Mrs. Sandals: I wanted to follow up on the issue around professional judgment, which you've just alluded to. We have heard from a number of presenters about that professional judgment: Is this self-inflicted? Does this present a danger to public safety? When should you report? When shouldn't you report? A number of the presenters have said to us that they appreciate having it clarified: "This is exactly what must happen."

Ms. Bajnok: One of the things to keep in mind is that the way the college standards are presented is that there is first that acknowledgement: "This looks like something that should reported. This looks like a safety issue." Then there is always that opportunity to dialogue with the health care team, so you're getting a team perspective and point of view. So I'm not certain that it's as major an issue: You have a presenting gunshot wound and you make the decision. It's the same as with what we were talking about before, other kinds of injury inflicted through violence. You still have to make that judgment. We might have the legislation about gunshot wounds; the next thing, you have someone coming in with a stab wound or a blunt object being thrust at them. So there still is that professional judgment situation. What we look to is that opportunity to dialogue with colleagues if there is uncertainty.

The Chair: Mr. Racco, last question; quickly, please.

Mr. Racco: It's clear in the OHA presentation that they believe it's better that all gunshots are reported. If Bill 110 passes, it makes it the law that health care professionals must report. My question is, wouldn't that be better than leaving flexibility to health care professionals to make the decision to report or not to report? Wouldn't it make your job easier if you must report?

Ms. Bajnok: I don't believe it would. First of all, you're only talking about one type of injury that might inflict problems for the rest of the public. Second, you're talking about introducing some challenges to the nurse-patient relationship, which we think could make it more difficult for nurses to work closely with patients and carry out the appropriate care and treatment. Third, we feel it would add to the many roles and functions of registered nurses currently in busy health care organizations. The full consensus is that it wouldn't make the role easier.

The Chair: Thank you very much, Ms. Bajnok and Ms. Block, of the RNAO.

Mr. Kormos: Chair, before we adjourn, may I make a request to legislative research, please?

The Chair: Please.

Mr. Kormos: I appreciate that this is not as straightforward as I wish it was, but surely there has been some debate around the compulsory reporting of spousal abuse in terms of a woman's right to control that facet of her life. I'm wondering if you could come across point-counterpoint in terms of that debate, with the obvious relevance to what is being discussed now and the concern about whether that endangers women who might be victims of gunshot wounds from partners.

The Chair: Thank you, Mr. Kormos. Research has noted your request.

Housekeeping items for the committee: The deadline for written submissions expires now. The deadline for submitting amendments will be Monday, March 7 at 4 p.m.

This committee stands adjourned until Wednesday morning, March 9, for clause-by-clause consideration; time notification to follow.

The committee adjourned at 1206.

CONTENTS

Thursday 3 March 2005

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Président
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr. Michael A. Brown (Algoma–Manitoulin L)
Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)
Mr. Kevin Daniel Flynn (Oakville L)
Mr. Frank Klees (Oak Ridges PC)
Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)
Mr. Mario G. Racco (Thornhill L)
Mrs. Elizabeth Witmer (Kitchener–Waterloo PC)

Substitutions / Membres remplaçants
Mr. Garfield Dunlop (Simcoe North / Simcoe-Nord PC)
Mr. Khalil Ramal (London–Fanshawe L)
Mrs. Liz Sandals (Guelph–Wellington L)

Clerk / Greffier
Mr. Katch Koch

Staff / Personnel
Mr. Avrum Fenson, research officer,
Research and Information Services

JP-24

ISSN 1710-9442

Legislative Assembly of Ontario

First Session, 38th Parliament

Assemblée législative de l'Ontario

Première session, 38e législature

Official Report of Debates (Hansard)

Wednesday 9 March 2005

Journal des débats (Hansard)

Mercredi 9 mars 2005

Standing committee on justice policy

Mandatory Gunshot Reporting Act, 2005

Comité permanent de la justice

Loi de 2005 sur la déclaration obligatoire des blessures par balle

Chair: Shafiq Qaadri
Clerk: Katch Koch

Président : Shafiq Qaadri
Greffier : Katch Koch

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Wednesday 9 March 2005

Mercredi 9 mars 2005

The committee met at 1034 in room 228.

MANDATORY GUNSHOT REPORTING ACT, 2005

LOI DE 2005 SUR LA DÉCLARATION OBLIGATOIRE DES BLESSURES PAR BALLE

Consideration of Bill 110, An Act to require the disclosure of information to police respecting persons being treated for gunshot wounds / Projet de loi 110, Loi exigeant la divulgation à la police de renseignements en ce qui concerne les personnes traitées pour blessure par balle.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, members of the committee, welcome to the standing committee on justice policy. We're deliberating today, as you know, on Bill 110, An Act to require the disclosure of information to police respecting persons being treated for gunshot wounds. I'd like to just outline for the committee that a copy of the amendments that were received by the clerk as of yesterday's 4 p.m. administrative deadline has been distributed, and we'll be considering those amendments in the number and the order in which they were received.

For the members of the committee, I'd like to welcome and point out to you legislative counsel, Ms. Susan Klein, who will be here to assist us with clause-by-clause consideration.

I now put questions to the members. We begin with item-by-item consideration. Are there are comments, questions or amendments to any section of the bill and, if so, to which section?

Mr. Peter Kormos (Niagara Centre): I'm not going to be lengthy. I want to thank the people who participated in the committee process. I'm going to acknowledge right off the bat that I was disappointed in the paucity of attendance, in that I expected there would be other groups, organizations or individuals who would want to participate in the committee hearings. I don't think their failure to do that in any way reflects their lack of interest. It may well be simply a matter of the timing and the time frames. I also want to thank legislative research, Ms. Drent, who was assisted by Mr. Fenson, because, as usual, they responded to all the requests put to them for supplementary research.

I want to tell you that the NDP has serious concerns about the whole theme and thrust of the legislation. We are impressed by the comments made by John Carlisle, the retired deputy registrar of the College of Physicians and Surgeons. Those comments are summarized on page 4 of the March 8, 2005, research paper prepared by Ms. Drent. Of course, we are impressed by the comments made by OPSEU and the Registered Nurses Association of Ontario with respect to their concerns about the legislation. We're also impressed by the observation from both nursing and other health professionals, as well as from doctors themselves, that it appears that in both of those camps there already exists the discretionary power to report. There is not before us a single bit of evidence about a gunshot wound involving a crime that the police were unaware of. That may well be the case; I simply don't know at this point.

I do know, based on the material acquired and presented to us by legislative research, that even, for instance, in US jurisdictions where there is mandatory reporting, there is, in one instance, 13% non-compliance. That was one of the US jurisdictions; as a matter of fact, it was Georgia. An audit of hospital records revealed that 13% of gunshot wounds seen in an Atlanta emergency room did not have a corresponding police report, and that's in a jurisdiction where apparently there is compulsory reporting. So there are serious problems, then, with the reporting.

You know we have concerns about the mental health aspect, about the fact that one of the largest single blocks of gunshot wound admittances to hospital emergency rooms are from attempt suicides. I read the comments by the OMA that counter the argument that attempted suicides don't need police intervention, because there's a faction within the OMA that argues that the gunshot is still relevant because the utilization of a gun is a danger to other people.

I'm not satisfied that this bill is anything more than an attempt to exploit the real fear and real concern about the proliferation of illegal guns out there, especially handguns, and especially in Toronto where it's marked. I'm prepared to acknowledge that in Toronto it's more significant than it is perhaps in other parts of the province, although it may be no less a concern in other parts of the province. I'm simply stating that we cannot support the legislation, based on the submissions made, based on the material presented.

1040

I'm confident that every member of the committee has read the research paper prepared by Mr. Fenson, Problems with Mandatory Reporting of Spousal Abuse, and the observation, on page 3, albeit from an American journal: "The inability of the system to protect domestic violence victims from retaliation by their abusers is one reason for opposing mandatory reporting." I suggest to you that the history that we're all familiar with in Ontario and Canada around the inability of the system to protect spouses from return visits by dangerous and homicidal partners, the observation about "made in the United States" is equally relevant here.

I don't believe this bill solves a problem. The problem is manifold, but the bill, by creating an obligation to report, does not solve the problem, because we understand now that doctors and other health professionals already have an ability to report, that indeed their ethical responsibility is to report a gunshot wound when they believe, in their judgment, that it poses a risk to the community in general. That seems to be the test. That would protect mental health patients and attempted suicides from inappropriate police intervention, and it would allow doctors and other health professionals to focus on doing what they do best.

Just in closing, please—and I appreciate the politics of this—I don't suggest that anybody in this room or in this Legislature has an interest in advocating the ongoing proliferation of illegal guns or illegal gun use. To suggest that anybody, regardless of their position on this issue, by virtue of that position is somehow advocating or condoning illegal gun use is naive, unfair and not becoming.

The Chair: Any further comments, questions and/or amendments?

Mrs. Liz Sandals (Guelph–Wellington): First of all, if I could just respond to a few of the comments that Mr. Kormos made, with respect to the research that was done on a comparison of gunshots reported at hospitals for mandatory reporting versus those that had police reports, I read that research in a completely different way, which was to say that depending on the state, there were a couple of states cited where in fact there were issues, gunshot wounds that were being reported by hospitals which were unknown to the police in previous police reports. So I read that research to confirm that mandatory reporting in fact identified additional gunshot wounds that were unknown to the police.

Obviously, in Ontario, we have no way of getting that data, in that if they are unknown to the police, they don't know they're sitting in the hospital injured, so we have no way of getting that, but in jurisdictions where there was some way of comparing, they found that there were additional gunshots being reported by hospitals that were unknown to police. So I interpreted that in a totally different way.

With respect to the research on spousal abuse, I noted when I read that research that when women were actually surveyed—as opposed to people's perceptions about what might happen—the majority of women, including those who had actually been abused, supported mandatory reporting of spousal abuse. And I would note that in this case we are not mandating reporting all spousal abuse; we are merely mandating reporting of gunshot wounds. I would suggest that if a wife—which is typically the situation—has been shot by her husband, that is very definitely a crime and I would certainly want someone to intervene, because if the husband has been unsuccessful, you would think, given the data around escalation, that he might well be successful the next time and we'd have a murder on our hands as opposed to an attempted murder. So, as a woman, I think I would want somebody intervening in that situation.

Those are just a few comments in response, Mr. Chair. May I go on and begin to table amendments?

The Chair: In a moment, Ms. Sandals. I'd like to offer the floor to Mr. Dunlop from the PC caucus for an opening statement.

Mr. Garfield Dunlop (Simcoe North): My initial comments are very brief. I want to thank everyone who participated: the medical associations, OPSEU and the police organizations. I know this is a bill that a lot of the organizations have lobbied for. No matter how the amendments go, I will be supporting the legislation and our caucus will be supporting it; we believe in it. I would just hope that you would take a serious look at the amendments that I've made today. I think they make it more complete. So with that, I'm ready to go with the amendments, if Mrs. Sandals is ready.

The Chair: Sure. Do I take it that it's the opinion of the committee that we're ready to proceed with clause-by-clause?

Mrs. Sandals: Yes, thank you.

I move that section 1 of the bill be struck out and the following substituted:

"Definition

"(1) In this act,

"'facility' means:

"(a) a hospital, as defined in the Public Hospitals Act,

"(b) an organization or institution that provides health care services and belongs to a prescribed class,

"(c) if a regulation is made under clause 5(a.1), a clinic that provides health care services, or

"(d) if a regulation is made under clause 5(a.2), a medical doctor's office."

This amendment would allow, but not necessarily require at this point, regulation-making authority to include reporting by walk-in clinics and doctors' offices, should that become necessary.

The Chair: Any comments on that?

Mr. Kormos: I'm just interested in the language, because it's interesting that you say health care clinics if they're drawn in by regulation. Why was that decision made—health care clinics and medical doctors' offices, (c) and (d)—rather than simply indicating "any other place prescribed by regulation," which seems to me the more usual language or structure? If I'm wrong, people are going to correct me fast. Look how eager he is to come up here to correct me.

The Chair: Please sit at the front, identify yourself for Hansard and proceed.

Mr. Dudley Cordell: My name is Dudley Cordell. I'm a lawyer with the ministry. The decision was made to include the clauses as they're written here so that the regulation could cover walk-in clinics and doctors' offices, where people might go for treatment instead of public hospitals.

Mr. Kormos: It's obvious what you're doing. Again, I don't quarrel with that; to me, it's neither here nor there. But why did you choose to specifically say "a clinic that provides health care services" and "a medical doctor's office," as compared to simply saying "any other place prescribed by regulation," which seems to be more general, as compared to more specific?

In other words, what you've done is limit the regulatory power here; right? Rather than giving a broader regulatory power to prescribe any place—the test is, it has to be a medical doctor's office before it can even be a prescribed place.

Mr. Cordell: If you combine clauses (b), (c) and (d), you'll see that it's basically any kind of place that provides health care services. I think the desire is to not make it so open-ended that it would capture non-medical situations. That would be my answer.

Mr. Michael A. Brown (Algoma–Manitoulin): Just for clarification, this would not cover a physician who made a house call?

Mr. Cordell: No, it probably wouldn't, because it's the office itself that has to make the report. We could comment later; there's additional reg-making authority in section 5 that might somewhat address that.

Mr. Kormos: Mr. Brown's point is very well made. My concern here—because you heard what the comments were: If you're going to do this, then do it across the board, otherwise you don't have real reporting, you don't have full coverage. This reinforces my suspicion—and again, I'm not pointing fingers—that this bill is about mere political positioning more than anything else. You heard the comment from some sources who are advocates of gunshot reporting saying, "Doctors' offices should have to do it too; similarly, health clinics"—presumably things like walk-in clinics. So I'm wondering why the government didn't simply say, "Then doctors have to do it, and walk-in clinics have to do it," so that it's part of the bill, so that it's part of this debate and so that it's part of what people are voting on. Mr. Dunlop may want to comment on that.

1050

The government is having it both ways. The government is saying, "See, we responded to the concern about the fact that it's only going to be partial reporting, because we include doctors' offices and walk-in clinics"—that's what we're talking about, by and large, walk-in clinics—"but we don't really include them, because it's up to regulation afterwards." I don't think, with all due respect, that that's very fair from the government's point of view.

Doctors' offices staff—doctors didn't have a chance to address this vis-à-vis the implications it would have for their offices, for instance, because it wasn't part of the original bill. Doctors' positions about this bill could well be very different, even the OMA's, if their office staff had to report too. They are far more vulnerable, let's say, to retaliation than—I don't want to suggest that you pit one group against the other—people working in a hospital that has security guards and layers of protection, presumably. That's not to say they're not vulnerable, but certainly far more so, down where I come from or where Mr. Brown comes from, is the local doctor's office, which is often in an old house, for instance, with no more security than the bars that might be on windows to prevent break and enters. So the way this is worded causes me some concern.

Mrs. Sandals: That, in fact, is to some degree precisely why it has been addressed in this re-issue. Before any regulation is put in force, we would want to identify that gunshot wounds are an issue at walk-in clinics and/or in doctors' offices, so that we have allowed the possibility of distinguishing between those. The fact that it is a regulation as opposed to an absolute requirement would allow us to consult with the people who are affected about whether or not the data shows this is necessary and what would be the most effective way of providing for this. So, in fact, it would allow for consultation, if the data show that this is necessary.

Mr. Kormos: Your colleague Mr. Brown has opened a Pandora's box that will cause untold grief for his government, and I respect him for that. I don't expect anything less from Mr. Brown.

Look at the dilemma we have here if the bill passes, and I'm pretty sure that if it's called for second and third reading, it will pass. If the bill passes, one way or the other, if after your consultation you find out, if this is what you're saying, that doctors' offices don't have the level of security necessary to protect the staff, and similarly walk-in clinics—you and I both are familiar with them; they are not staffed, and they are not built physically the way a hospital is—gosh, you know that if you don't include doctors' offices and walk-in clinics, then they will become the destinations of choice for gunshot wounds, in the instance of unsavoury characters. So you'll then open the floodgates; you'll be steering people away from the hospital, for the unsavoury characters, to the doctors' offices and to the walk-in clinics. Yet you say you're going to consult. To what end? To say whether they want to? You know darn well what their druthers are. You know what the OMA recommended.

I find this very dangerous thin ice. That's all I'll say to it.

The Chair: Are there any further questions from Mr. Cordell and/or comments on this particular amendment?

If not, is the committee ready to proceed with voting on this particular amendment?

All those in favour? All those opposed? Carried.

Shall section 1, as amended, carry? Carried.

We'll proceed to amendments to section 2.

Mr. Dunlop: We've got them in order here now.

I move that subsection 2(1) of the bill be struck out and the following substituted:

"Mandatory disclosure of gunshot wounds and knife injuries

"(1) Every facility that treats a person for a gunshot wound or a knife injury shall disclose to the local municipal or regional police force or the local Ontario Provincial Police detachment the fact that a person is being treated for a gunshot wound or knife injury, the person's name, if known, and the name and location of the facility.

"Exception for knife injuries that are obviously self-inflicted

"(1.1) Subsection (1) does not apply if the person treating the person for a knife injury is of the opinion that the knife injury was obviously self-inflicted."

Obviously, this came up a few times in the deputations that came before the justice committee. In fact, I refer to the Ontario Hospital Association's presentation, when they actually asked why more wasn't being done with the legislation. I go back to a resolution that was made in the House by a former Solicitor General, Bob Runciman. He included knife injuries in his resolution as early as December last year.

I feel that because it's a public safety bill, adding knife wounds would help make the bill more complete, and I'll just use some examples. I'm saying that if someone walked into the emergency room of a hospital with a gun injury from a hunting accident, under this legislation, the doctor or the physician or the staff on duty would have to report that wound, but if somebody came in with three stab wounds to their stomach, they wouldn't have to report it. I've heard some comments that this doesn't cover the scope of the bill and that type of thing. I just can't for the life of me see why adding something like a knife injury would not make the bill more complete at this time.

All of the amendments we're making today—there are four amendments. I'm not going to repeat myself on every amendment, but the bottom line is, I'd appreciate the government considering this because I do think it makes the legislation more complete. Whether or not you support the amendments, as I said earlier, our caucus will be supporting the legislation.

Finally, during my consultation with stakeholders—and I met with a number of the same people who made presentations here, as well as some who did not—law enforcement officers particularly mentioned to me, why wouldn't we have other types of injuries included in the legislation, other than just mandatory gunshot wounds? That's why we've added the knife injuries. We think it would make a more complete bill.

The Chair: Are there any comments on PC motion number 2?

Mrs. Sandals: We understand that there was some discussion about this issue. The scenario you have presented is certainly something where we would hope the hospital would exercise its discretion and notify the police. However, we do have some serious concerns around including all knife injuries. In the case of knife wounds, you're going to get into a very broad range of wounds that have to do with people mishandling knives. They may be doing the chef thing in the kitchen and take off the end of their finger. They may be cleaning fish and do whatever you do while cleaning fish. There are all sorts of ways in which people come to grief with knives.

Interjection.

Mrs. Sandals: Thank you for that input, Ernie.

So knife wounds are broad. On the other hand, knives don't exactly characterize it, because we may have machetes and axes and all sorts of other things that this wouldn't capture. But when we get down to the exception clause, which in some ways one would require to make this sensible, you then get into another issue: whether or not doctors and medical personnel should be required to become de facto investigators. When we look at the bill as currently formatted, we're talking about mandatory reporting of all gunshot wounds, so that there is no onus on the medical facility beyond identifying that a gunshot wound has occurred and reporting that to the police. The police are then responsible for investigation.

1100

As soon as we start making exceptions—some types of wounds you have to report; other sorts of wounds you don't have to report—that drags the medical profession into having to investigate: "How did you get this wound?" "Do I think this was self-inflicted?" "Do I think it wasn't self-inflicted?" We're very concerned about the legal implications of drawing medical personnel into having to make a decision.

I would also note that within the testimony, when we heard supporting comments from the medical profession, one of the things they liked about the bill, as currently structured, was the fact that it was very clear. What we heard from the medical profession was, "There is an absolute requirement to report all gunshot wounds. We don't get dragged into investigating and trying to make value judgments around who did what to whom and whether it was a good thing or a bad thing. We just have an absolute requirement to report." It's clear that that is the case.

Because of the lack of clarity which this introduced into the bill and the requirement to drag medical personnel into decision-making of an investigative nature, we will not be supporting the amendment.

Mr. Dunlop: Can I just quickly respond? My concern, Mrs. Sandals, is that this is a public safety issue. It's a public safety bill. Yes, there may be some concerns around the medical community, the things that you've brought forward, but by and large most of the crimes are not committed with gunshot wounds, they're committed with knives. My guess is it's probably 10 to 1.

Some of the deputations, such as the report that came in from the Police Association of Ontario, talked about gang violence and gun violence etc. But my concern is that if we're trying to do a bill that helps police officers, helps public safety on our streets, then we should take a

look at a bill that is more all-encompassing. As I said, I understand where you're coming from with the legislation, but in the future we may try to amend that.

Mr. Kormos: I think the comments by both Mr. Dunlop and Mrs. Sandals illustrate the serious problems the NDP has with this bill. The Conservatives are very clear about where they come from, yes. They're Conservative and they've been consistent. Mr. Runciman has made it clear that he wants medical personnel to be an integral part of the crime reporting and investigation process, as they've put it, in the interest of public safety. I disagree with that position, but they've been very candid about that and very straightforward.

With respect, the government is trying to have it both ways. You point out—good grief—knife wounds happen any number of ways. Read the data on gunshot wounds and admissions to emergency wards. They happen any number of which ways. In fact, the three groups are self-inflicted attempted suicide, self-inflicted accidental, and then the third group, "Somebody shot at me," and it was the criminal type of shooting.

You say you'd rather let doctors and other medical personnel use their discretion. Precisely the point—point made. I'd far sooner have doctors and other health professionals—and the evidence we heard was that they are well trained in their duties, their duty of confidentiality but also their duty to report when it's in the public interest. I'd far sooner have that prevail. I frankly have a lot more confidence in that than an overly regulated system which requires, then, people to start interpreting the law.

Look, when I was a kid down in Crowland, there were gunshots, but they were outright homicides. But when people were getting into fights behind the Crowland Hotel, the most offensive weapons that were used were hockey sticks or baseball bats. I remember Donny Beauchamp coming back from a brawl in Dunnville, every one of his teeth knocked off at gum level.

Now, attending at a hospital as he did, it's not hard to figure out how that happens. That's neither self-inflicted nor is it accidental. I know, as a layperson—not as a medical—I've had enough lifetime experience as a teenager to know what an attack by a baseball bat or a pool cue looks like, especially when it's applied to the mouth. You don't have to be a physicist to figure it out.

So are you interested in using health professionals as investigators and as reporters of crimes, or are you not? You are, if I may say, somewhat Janus-faced about this one. You're trying to have it every which way but loose. I think you're buying some problems. I don't agree with the Tory proposition, but I tell you, the Tory proposition is far more consistent with the theme than yours is.

The Chair: Thank you, Mr. Kormos, for the reminiscence. If we are now able to proceed with voting on the—

Mr. Kormos: No. The Crowland Hotel is still there.

The Chair: Is the committee ready to vote on this amendment? Yes?

All those in favour? All those opposed? I declare this PC motion defeated.

Mr. Dunlop: Mr. Chair, can we record these votes?

Mr. Brown: You have to ask.

The Chair: Yes, Mr. Brown's correct. You need to ask. We're happy to do so. You just need to ask.

Mr. Dunlop: I'd ask for the rest of the votes to be recorded.

The Chair: Shall section 2, as amended, carry? Carried.

Having no amendments proposed for section 3, I'd open the floor for any general comments on section 3. Any comments on section 3? All right. Seeing none, I will now proceed.

Shall section 3 carry? Carried, as is.

I now proceed to open the floor for amendments for section 4.

Mrs. Sandals: I move that section 4 of the bill be amended by striking out "on the staff of a facility." This is a technical change which just makes the clause read properly in concert with the amendment that we previously made.

The Chair: Any questions or comments on the section 4 amendment proposed? Mr. Dunlop? Mr. Kormos? All right. No comments? Are we ready to proceed with the voting?

Mr. Dunlop: Recorded vote.

The Chair: We'll have a recorded vote.

All those in favour of government motion amendment number 3?

Ayes

Brown, Delaney, Dunlop, Parsons, Sandals.

The Chair: All those opposed? Carried.

Shall section 4, as amended, carry? Carried.

Amendments for section 5: Mrs. Sandals?

Mrs. Sandals: I move that section 5 of the bill be amended by adding the following clauses:

"(a.1) adding a clinic that provides health care services to the definition of 'facility' in section 1;

"(a.2) adding a medical doctor's office to the definition of 'facility' in section 1."

That simply provides for the regulation-making authority that we have already alluded to in the amendment we have adopted. So I presume that at this point, this is just technical.

1110

The Chair: Any questions or comments regarding this amendment?

All those in favour of the government motion?

Mr. Dunlop: Can we record that one too?

Ayes

Delaney, Dunlop, Parsons, Sandals, Smith.

The Chair: All those opposed? I declare the amendment carried.

I open the floor for further motions on section 5.

Mrs. Sandals: I would like to table a further motion, and I believe this is on everyone's desk. It is labelled motion 4(a).

I move that clause 5(c) of the bill be struck out and the following substituted:

"(c) governing the requirements in section 2 respecting the manner and timing for the disclosure under that section, including prescribing the persons responsible for making the disclosure on behalf of the facility, and prescribing additional requirements."

It has been suggested by leg. counsel that this would further clarify the amendments that have already been made with respect to the possible inclusion of walk-in and doctors' offices. It's a technical amendment to go with the amendments we've already had. I see a little bit of head-scratching going on. What we have done is added, "including prescribing the persons responsible for making the disclosure on behalf of the facility." It's not something which is absolutely necessary, but would provide some further clarity.

Mr. Kormos: This is an interesting one as well. You heard what folks had to say in terms of, let's say, nurses versus doctors—doctors being the ones who have to diagnose, and the doctor being the person who can authoritatively say, "This is a gunshot wound." I appreciate that at some level this becomes overly academic and removed from the real world, but for the fact that, yes, I presume that gunshot wounds can, from time to time, in the first instance, not display themselves as obvious gunshot wounds. So what you're talking about here is the timing, the manner and whom will be responsible.

As you know, part of the tension is between nurses and other health professionals versus the doctors, they saying, "Well, if the doctor who diagnoses"—again, I throw in, just to melodramatize it a little bit, who is going to be sitting in the hallways of some stinky, old provincial courtroom for two or three days while a preliminary inquiry's taking place, waiting to be called as a witness, being leered at and pointed at by a bunch of biker gang members or drug-dealer types, they knowing that person is a witness who may be adverse to their buddy's or gal's interests or vice versa.

Again, why doesn't the government just grab the bull by the horns and say, if the OMA supports this as enthusiastically as they do—because you know that the College of Nurses doesn't support it; you know that that the RNAO, the Registered Nurses Association of Ontario, doesn't support it—that the doctor attending shall report it, and then hear the squeals of protests, the howling, from the OMA. I've got a feeling that what's going to happen here is that it won't be doctors at the end of the day; it will be someone else in the food chain, someone who is far less eager to involve themselves at this particular level.

And what are you talking about when you talk about the time frame? What are you talking about in terms of a breach, a failure, which I'm going to address before we finish discussion of the bill here? At the end of the day, quite frankly, it appears you've got an obligation here without a remedy. Think about this one, Mr. Dunlop: It is still very much discretionary on the part of the health professionals, be they doctors, nurses etc. This could be more window dressing than we even first suspected. Might it not, Chair?

The Chair: Any further comments? We'll proceed to the vote, then.

Mr. Dunlop: Recorded vote.

Ayes

Delaney, Dunlop, Parsons, Sandals, Smith.

Nays

Kormos.

The Chair: I declare the motion carried.

Shall section 5, as amended, carry? Carried.

There have been no amendments proposed for section 6, so I open the floor for comments on section 6, if any.

Shall section 6 carry? Carried.

With regard to section 7, we open the floor for amendments .

Mrs. Sandals: This is the one that is labelled 5 in your package:

"I move that section 7 of the bill be struck out and the following substituted:

"Short title

"7. The short title of this act is the Mandatory Gunshot Wounds Reporting Act, 2005."

This is simply to clarify the previous short title, which said "Gunshot Reporting Act." That might be slightly misleading, so we've inserted the word "wounds" in there so it's consistent with the long title.

Mr. Kormos: Why would the government start to care now about being consistent?

Mrs. Sandals: We're always consistent, Peter.

Mr. Kormos: How about being slightly misleading?

The Chair: Any further comments on the record?

Mr. Dunlop: I'm not going to support this particular motion, but I can tell the government members that it already has become a little bit misleading. We've had a number of calls from our—

Mr. Kormos: Hey, hey, hey.

Mr. Dunlop: Is "misleading" the wrong word to use here? OK. It's questionable, because we've already had a number of calls in our office from hunters and you name it. They actually thought, when it was reported, that that would mean anybody shooting—a duck hunter, or whatever it may be—if they're shooting outside, there's a gunshot, and it wasn't a wound. We've had a lot of calls on that, so we had to clarify that ourselves on behalf of the government, so thank us for doing a good job on your behalf.

Mrs. Sandals: Thank you, Garfield.

The Chair: Mr Kormos, any comments? We'll proceed to a vote. I presume you'd like it recorded, Mr. Dunlop.

Ayes

Brown, Delaney, Parsons, Sandals, Smith.

Nays

Dunlop.

The Chair: I declare the motion carried.

With regard to the further motions regarding section 7, PC motions labelled 6, 7 and 8, I'm advised that these are stranded amendments in that, motion 2 having already been defeated, numbers 6, 7 and 8 are out of order because they do not reflect amendments that have been made to the bill.

1120

Mr. Kormos: Please. We now have a lengthy history of bills in this chamber which, for the last eight and a half, nine years, have had titles that are in no way consistent with their content. Think about it. Why should it be out of order all of a sudden for a bill's title to not reflect its content? That's been a stock in trade by government after government. It's legion by now. I invite the Chair to reconsider—I don't challenge the Chair, but I invite the Chair to reconsider—because we've had so many titles of bills that are at 180-degree odds with what the content of the bill is. Why should this committee not be able to entertain a title that is at odds with the content?

The Chair: Thank you, Mr. Kormos. Just to clarify, the reason that amendments 6,7 and 8 are actually being ruled out of order is because they refer to the knife injury reporting of amendment 2, which has been defeated. Any further comments?

Shall section 7, as amended, carry? I declare section 7 carried.

Shall the preamble of the bill carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 110, as amended, carry?

Mr. Kormos: Chair?

The Chair: Yes, Mr. Kormos?

Mr. Kormos: I think what people had better note right off the bat is that in many respects the bill doesn't change the status quo at all. Although the bill says "shall," specifically in section 2, the bill doesn't create any remedy or recourse in the event that people don't, as compared to "shall." The bill does not create an ethical obligation on the part of practitioners, either doctors—those ethical standards being set by the College of Physicians and Surgeons—or nurses—those ethical standards being set by the College of Nurses.

Indeed, the government—see, once again, Mr. Dunlop—is stealing a book from the Tory law-and-order page. First they appoint Julian Fantino as emergency management czar. They scooped him out from under the Tories' noses. He was going to be your candidate up in Woodbridge. Nope, the Liberals scoop him up. Then they outdo you on the mandatory gunshot wound reporting, which, of course, as we know, means that if a person comes to a hospital with a knife wound, but says, "And to boot, the SOB was shooting at me"—right? Think about this—the government says that doesn't have to be reported. You hear what I'm saying? Even if the interest is the control of illegal use of firearms, you've got a guy who's knifed who says, "The one actor knifed me, and while I was running, the other guy was shooting at me." Again, gunshots are not hard to—real live gunshots, as compared to the ones on TV—trust me, by and large, you know them. It's sort of like you'd wish the world were for pit bulls. You know one when you hear one.

Here's a bill that does nothing to change the discretion on the part of health professionals. Indeed, perhaps it goes further and says that it's that discretion that has to be authorized, because when they talk about actions or proceedings, they clearly, in my view, talk about civil actions, civil proceedings, lawsuits, versus proceedings within a college, like the College of Nurses or the College of Physicians and Surgeons.

That was one of the criticisms of the bill from participants. In particular, John Carlisle, retired deputy registrar of the College of Physicians and Surgeons, noted, "as currently drafted, section 4 of the bill does not address the possibility that health care practitioners could face complaints to their regulatory colleges with respect to reporting activity." That's in the research paper prepared for us by Ms. Drent.

This is a funny bill all right. The government is going to run with this. They're going to raise this flag up the pole. The problem is, nobody's going to salute, because it's a meaningless bill. It's a zero bill; it's a non-bill because it doesn't protect practitioners, who are regulated by their respective colleges, from any action within the college. So the colleges' standards with respect to confidentiality prevail. That's clear in the bill, as pointed out by Mr. Carlisle. Secondly, it doesn't create any penalty for failing to report. What it does do is indemnify against civil action. But you and I both know, Chair, that in Canada, at least—it may be different in the States, where far more litigious juries deliver huge payments, huge judgments. But come on, give me a break; the prospect of a lawsuit against somebody reporting an attempted murder is marginal, isn't it? The judge would laugh you out of court, and if the judge didn't laugh you out, the jury would shrug and you'd be involved in litigation where you've got the old British ha'penny award—right?—like you saw in Britain, the most modest level of award.

It's not a matter of the government biting more than it could chew; the government took a little bite and then spit it back on to the plate. So we're left no better off than we were before. I am amazed, and I thought nothing more would amaze me. Thank you kindly.

The Chair: Any further comments?

Mrs. Sandals: Rather than responding to all the hypotheticals in there, I'll try and respond to a couple of substantive issues. The one that has been raised around, could this lead to a complaint by a professional college, I noted in some of the research that was prepared for us that, for example, when we looked at the professional standards of the College of Nurses, it quite explicitly

states in there that when required to report by law, it will not be a contravention of the duty of privacy to the patient. I would think that would be the sense in the other medical professions, that when there is an explicit requirement to report, which clearly there is here, the legal requirement to report takes precedence and in fact there would be no grounds for complaint.

With respect to the issue of penalties, you've actually hit on something that is near and dear to my soul, about which the lawyers over here are going to say, "Where is she going?" I happen to be familiar with one of those dramatically badly named bills in which trustees were subject to rather draconian, in the words of the court, penalties for failure to comply. I would suggest that we, as the McGuinty government, do not behave in that way. When we set out a law that is aimed at our public sector partners—in this case, primarily aimed at public hospitals—we assume that other public institutions comply with the law and we do not have to set out draconian penalties in law.

Mr. Dunlop: First of all, our caucus will be supporting this bill, even with the fact that we didn't add the amendments. As critic for community safety and corrections, I'm very happy that in 18 months, we finally have an opportunity to take this before the House. I do hope we'll call it at some point in the spring and actually be able to debate it, because we haven't debated anything on public safety yet.

I'm disappointed, though—and I'll say this to the Liberal members—in the fact that, by adding the knife injuries, this was an opportunity to provide leadership in this area, and I don't think we're seeing it. I think the bill is very vague. I'm speaking both ways, of course. I will support anything that will help public safety, but I think we could have done a better job in adding the amendments, and the regulations could easily have resolved any of the issues you've brought forward here today.

I'm looking forward to getting it into the House. After 18 months as critic, it has been terrible sitting there and watching all the other bills go through—pit bulls and bring-your-own-wine—and nothing about community safety. That's a real concern for me, and I'm glad we are finally going to get there.

Mr. Kormos: First of all, a right without a remedy is hardly a right. An obligation without a consequence for failure to fulfill that obligation is hardly an obligation. We're writing a statute here, not moral and ethical standards. Having said that, I have got to express concern. I'm going to give my Conservative colleague some gratuitous advice, which is probably going to be worth about as much as he is going to pay for it. I anticipate the day when the Conservatives stand up in question period to rail about one of the shortcomings or inadequacies of this bill, Bill 110, presuming it becomes law. Then of course Monte Kwinter, the minister, or his successor will point back and, first, thank you very much for your support of it, and question where you were when it came to the substance of the bill.

This three-party system is a valuable thing. It means there is pluralism in terms of the views that are expressed and in terms of the interests out there that are represented. I know the Conservatives are the real advocates for law and order. I am disappointed they would acquiesce in such a weak and mere showcasing lip service to law and order.

There are people in my community who look to the Conservatives—I'm serious; I know these folks—for their hard line and consistent approach on law and order. To see my Conservative colleagues being lured into bed with bleeding-heart Liberals who are merely paying lip service to law and order is going to be a disappointment to those folks down where I come from.

Ms. Monique M. Smith (Nipissing): That is really unattractive from you, Peter.

Mr. Kormos: Oh, get a bigger bed then.

The Chair: Thank you, Mr. Kormos. Are there any further comments?

Mrs. Sandals: Absolutely not.

The Chair: Shall I proceed to ask—

Mr. Kormos: Recorded vote.

The Chair: Shall Bill 110, as amended, carry?

Ayes

Delaney, Dunlop, Parsons, Sandals, Smith.

Nays

Kormos.

The Chair: I declare the bill, as amended, carried. Shall I report the bill, as amended, to the House?

Mr. Kormos: Recorded vote.

Ayes

Delaney, Dunlop, Parsons, Sandals, Smith.

Nays

Kormos.

The Chair: I declare Bill 110, as amended, carried, and it will be reported to the House today.

I'd like to thank the members of the committee for their attendance today for clause-by-clause and the previous hearings. The standing committee on justice policy is adjourned.

The committee adjourned at 1133.

CONTENTS

Wednesday 9 March 2005

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Président
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)

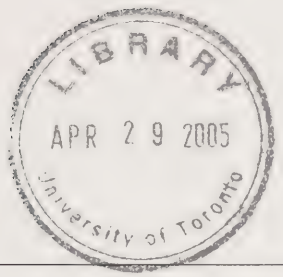
Mr. Michael A. Brown (Algoma–Manitoulin L)
Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)
Mr. Kevin Daniel Flynn (Oakville L)
Mr. Frank Klees (Oak Ridges PC)
Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)
Mr. Mario G. Racco (Thornhill L)
Mrs. Elizabeth Witmer (Kitchener–Waterloo PC)

Substitutions / Membres remplaçants
Mr. Garfield Dunlop (Simcoe North / Simcoe-Nord PC)
Mr. Ernie Parsons (Prince Edward–Hastings L)
Ms. Monique M. Smith (Nipissing L)
Mrs. Liz Sandals (Guelph–Wellington L)

Also taking part / Autres participants et participantes
Mr. Dudley Cordell, legal services branch,
Ministry of Community Safety and Correctional Services

Clerk / Greffier
Mr. Katch Koch

Staff / Personnel
Ms. Susan Klein, legislative counsel



JP-25

ISSN 1710-9442

Legislative Assembly of Ontario

First Session, 38th Parliament

Assemblée législative de l'Ontario

Première session, 38e législature

Official Report of Debates (Hansard)

Wednesday 20 April 2005

Standing committee on justice policy

Film Classification Act, 2005

Journal des débats (Hansard)

Mercredi 20 avril 2005

Comité permanent de la justice

Loi de 2005 sur le classement des films

Chair: Shafiq Qaadri
Clerk: Katch Koch

Président : Shafiq Qaadri
Greffier : Katch Koch

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Wednesday 20 April 2005

Mercredi 20 avril 2005

The committee met at 0908 in room 228.

FILM CLASSIFICATION ACT, 2005
LOI DE 2005 SUR LE CLASSEMENT DES FILMS

Consideration of Bill 158, An Act to replace the Theatres Act and to amend other Acts in respect of film / Projet de loi 158, Loi remplaçant la Loi sur les cinémas et modifiant d'autres lois en ce qui concerne les films.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, good morning. I'd like to call this meeting of the standing committee on justice policy to order. As you are aware, we're here to consider Bill 158, An Act to replace the Theatres Act and to amend other Acts in respect of film.

SUBCOMMITTEE REPORT

The Chair: We have a report of the subcommittee, and I respectfully ask if Mr. Brown would read it and enter it into the record.

Mr. Michael A. Brown (Algoma–Manitoulin): I'll move the report of the subcommittee.

Your subcommittee on committee business met on Thursday, April 14, 2005, and recommends the following with respect to Bill 158, An Act to replace the Theatres Act and to amend other Acts in respect of film:

(1) That the committee meet for the purpose of holding public hearings in Toronto on Wednesday, April 20, 2005, and if necessary, on Thursday, April 21, 2005.

(2) That the clerk of the committee, as directed by the Chair, advertise information regarding the hearings in the following dailies for one day each: the Globe and Mail, the National Post, the Toronto Star, the Toronto Sun.

(3) That the clerk of the committee, as directed by the Chair, also post information regarding the hearings on the Ontario parliamentary channel and on the Internet.

(4) That the deadline for receipt of requests to appear be Tuesday, April 19, 2005, at 4 p.m.

(5) That the clerk of the committee, in consultation with the Chair, be authorized to schedule all interested presenters on a first-come, first-served basis.

(6) That the length of the presentations for witnesses be 15 minutes for groups and 10 minutes for individuals.

(7) That the deadline for written submission be Monday, April 25, 2005, at 4 p.m.

(8) That the research officer provide a summary of presentations by Tuesday April 26, 2005.

(9) That the administrative deadline for submitting amendments be Tuesday, April 26, 2005, at 4 p.m.

(10) That clause-by-clause consideration of the bill be scheduled for Wednesday, April 27, 2005.

(11) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any preliminary arrangements to facilitate the committee's proceedings.

The Chair: I welcome any comments or debates on the subcommittee report.

Mr. Peter Kormos (Niagara Centre): I wonder if we could be advised about the response to the notice regarding the committee hearings.

The Clerk of the Committee (Mr. Katch Koch): As you can see, members of the committee, you have the agenda for today in front of you. We were able to fill up most of the day, which means that we will not require a second day of hearings tomorrow.

Mr. Kormos: And the agenda for today goes up till noon—

The Clerk of the Committee: Till noon.

Mr. Kormos: —and then again this afternoon?

The Clerk of the Committee: No. When the House is sitting, this committee is only permitted to sit on Wednesday and Thursday morning.

Mr. Kormos: Now, what does that mean? If there are last-minute requests, we still have tomorrow should we want to entertain requests to appear before the committee that are made after the deadline?

The Clerk of the Committee: That's right, if it is the will of the committee.

Mr. Kormos: Good, because I know we've got two ministry staff here, civil servants, and one, two, three four political staff. Only three? Well, wait a minute. There are at least two or three political staff here, so we'd better move along. There's a good $300,000 or $400,000 a year in salaries sitting here, so let's keep these people occupied. It's costing the taxpayer a fortune. How many bureaucrats does it take to monitor a committee?

The Chair: Any further comments or debate on the subcommittee report? All those in favour of adopting the subcommittee report? Any opposed? Carried.

RESPONSIBLE ONTARIO ADULT RETAILERS

The Chair: I'd now like to welcome our first scheduled presenter, Mr. Nicholas Satschko of Responsible Ontario Adult Retailers. Please come forward, Mr. Satschko. First of all, to remind you, housekeeping: You'll have about 15 minutes to present. Any time you leave remaining at the end will be divided evenly among the various parties, starting with the official opposition. If you would, please introduce yourself and your organization for the purpose of documentation for Hansard, and then please begin.

Mr. Kormos: Chair, I was advised that now there are five political staffers here. My God.

The Chair: Thank you, Mr. Kormos. Mr. Satschko?

Mr. Nicholas Satschko: My name is Nicholas Satschko. I'm here on behalf of our organization, Responsible Ontario Adult Retailers. We're basically individuals who have been distributing, selling, adult-related products in our province of Ontario. With me, on my right, I have Mr. Edmund Peterson, barrister and solicitor, and to his right I have my son, Gerry Satschko. The reason we are here is the hypocrisy of Bill 158.

I have been involved in this from day one, and the evidence I like to give is very simple. I despise, abhor, the term "kiddie porn" that is constantly used with adult-related materials because, to this day, not one retailer in Ontario has ever been accused or served with any notification that he or she is dealing kiddie porn. So let's get that straight. There are two things here: One is a terrible situation, and the other is material that we provide for adult users who willingly walk into a store and are clearly over the age of 19 or 21. The legal age is 19; however, I don't like to deal with anyone under the age of 21. We supply them with a product that is not only legal but approved by the Canadian federal government, which oversees the wrongs of this land, such as legislation toward kiddie porn, bestiality or any other type of inappropriate film viewing.

At this point, I don't know how much of this I'm going to take up with my very close friend Mr. Peterson, but just to go through an article in an Ontario newspaper, the Toronto Star, I had the distinct displeasure of meeting Mr. Robert Dowler four years ago, at which time he led us to believe that he was interested in forming a proper structure to evaluate and to regulate films in Ontario; however, very quickly after, we found out that Mr. Dowler and a whole team at the Ontario Film Review Board were actually working hand in hand with the Montreal distributors of adult video films. For the record, I would say 95% of all film distributors are Quebec-owned and do not pay taxes in Ontario.

Just to go over this very briefly, just the opening of this newspaper here: "The provincial government has decided to retain some censorship power." The only way I can answer that—is that like being a little dead, a little pregnant or a little bit asleep? How can you have some censorship in a free democratic society? Absolutely ridiculous. It's either against the law or it's within the law; you cannot have some censorship for it. How would you like me to tell you what you're going to eat tonight?

At this point, I'm going to hand this over to Mr. Edmund Peterson.

Mr. Edmund Peterson: I'll be rather brief because I'm mindful of the time limit.

The Chair: Would you mind just introducing yourself once again?

Mr. Peterson: Yes, indeed. My name is Edmund Peterson. I'm a barrister and solicitor in Ontario, and I am the legal representative, the solicitor, for both Mr. Satschko and Responsible Ontario Adult Retailers.

Ladies and gentlemen, I just have four points to make. First of all, the difficulty with this legislation is that it does not set a level playing field. This city makes approximately $30 million in profits of various sorts from the International Film Festival, which is held here every year. Anything that is seen at that film festival is seen without anyone from the OFRB having screened it, because there is an exemption. That film festival regularly includes items where not just explicit adult sex is shown, but cases where questionable adult sex is shown. I'll use the example of Fat Girl, the film that featured underage sexuality which the OFRB ultimately approved after a Divisional Court challenge.

I can go, as a private citizen, to the film festival and see something in this artistic milieu that is virtually the same footage that I cannot see unless it has been censored, screened, classified—at $4.20 a minute, I might mention—by some person who has no qualifications except that he was randomly selected to sit on an OFRB panel.

Mr. Justice Juriansz, now of the Court of Appeal, rightfully put his finger on the hypocrisy of this dichotomy. Why should some art film be free from censorship, free from any sort of oversight, while something that is simply rented in a physical location in Ontario isn't? That's my first point.

My second point is, I basically would ask the members to be mindful of the public purse here. On April 30 of last year, Justice Juriansz, in the decision of Glad Day, basically struck down the censorship regulation that forced every movie to be submitted, because it constituted a violation of freedom of expression which was not justified. The argument was over breadth. The law in those days said that you have to put in every single movie, with certain exceptions such as the film festival, to be screened at $4.20 a minute. His Lordship, as he is now, said, "No, that is not constitutional." It was struck down.

The new legislation does not do away with the impugned censorship. It sugar-coats it. It gives it a new name: classification. Yet the universal submission requirement is still there. Everything that I see or you all see, save and except videos showing one how to operate a chainsaw and, of course, the film festival, must be screened by someone with no experience, at $4.20 a minute. That, I submit, flies in the face of Justice Juriansz's judgment, and I reasonably foresee millions of

dollars of taxpayers' money being spent to implement a law that will be struck down as quickly as it is implemented.

0920

My third point is this: It is supremely easy to fix this problem. First of all, as Mr. Satschko said, kiddie porn is a criminal problem; it is not an art representational problem. Everything that comes across the border is screened, unless it comes by Internet. Everything that this young man may see on cable TV has no prior restraint whatever; that's under federal CRTC auspices, and they don't impose any prior restraint censorship. Neither, I might mention, does the province of Alberta. It says Manitoba in the article, but it's Alberta. It's a very simple system, cheap and effective. Every single movie is adults-only by default. If a distributor wants to sell it or rent it to somebody under 18, then he must submit it; otherwise, it's illegal to show it to anyone or rent it to anyone under 18. I'd point to that as effectiveness.

We are flooded, as some people say, with not just pornography but all films from everywhere. Internet films come in, and young people have access to them. Mail order Internet delivery of hard-core films can be effected in a matter of days from their distribution points in California by anyone with access to a credit card, completely unregulated. The only people, oddly enough, who are regulated are the ones who are physically present in Ontario, carrying on business, paying municipal taxes, basically adding to the wealth of Ontario. They're the ones who are being hit and affected by this.

My final point is simply one of money. I don't know if this is clear, but there is a significant economic difference between what are known as adult sex films and what are mainstream films. A mainstream film might be seen by a million people on its first weekend of release, perhaps 5,000 in each theatre. The $4.20-a-minute screening fee means nothing—it's a minor inconvenience—because the film will be seen by so many people. Adult sex films are usually seen by an audience of one or, at most, two in the privacy of an Ontarian's home, yet the exact same fees—which add, I might say, approximately $400 to $500 per title—are imposed on that same film, of which maybe, at most, 100 copies will be made and might be seen by 1,000 people in the whole of the country, whereby the blockbuster, where a million people see it, pays the exact same fee.

Ladies and gentlemen, the adult film business, the mom-and-pop stores on the corner, the ones we see, the ones that this Legislature can control, are being driven out of business. When they are driven out of business, if they are, then this material will be available, completely unregulated, via Internet, via cable TV, not to mention underground. By destroying a business, by demonizing a business, one basically promotes an unregulated business. If this bill passes—and I'm assuming that it may pass in some form, and I am quite certain that the courts will strike it down—it will not cause its effect. I submit that the best way is to do it the Alberta way or put in a default system that simply says if you call it an adult sex film—and most of them, I might mention, are self-evident from their nature—restrict its sales to adults only, and if you want to sell it to children, then you submit the film and get a lower classification. Those are my respectful submissions on behalf of Mr. Satschko and ROAR.

Mr. Nicholas Satschko: I also brought our future, sitting to my right, which I have a great deal of input in. It's a little difficult to get a young man of 12 years of age to express himself, but he's going to try to tell you in the next minute and a half his personal experience with a game that was brought out a couple of years ago, that was brought to the attention of the public of Ontario because the Ontario Film Review Board proudly stood up after the game was already off the shelves and said, "We're going to ban this game. We're going to give it an R rating." At that point, approximately one week before that, my son became aware of the Manhunt game, and in his own words, without any prodding, he promised to tell me only the truth and all the truth.

Mr. Gerry Satschko: I'm Gerry Satschko. Approximately a year ago, the Ontario Film Review Board placed a rating on the game called Manhunt. This game is very violent. You can do such things as cover somebody's head with a plastic bag and suffocate them and cut people's throats and so on and so forth. The people in the game also threaten your family and tell you that your wife is engaging in sexual acts where they're holding the game. It gets more brutal as you go on.

Nobody was playing this game when it first came out. It was on the shelves, but nobody was buying it. After the film review board placed a rating, everybody wanted it because it was rated. The sales went up. Me and my father, Nicholas Satschko, went to EB Games to see if we could purchase this game, but it was off the shelves and backed up and we cannot get a copy of it.

Mr. Nicholas Satschko: Thank you, J. The reason I had J testify is because—one thing he didn't mention, being young and inexperienced in speaking, something like his father, was that he was not aware of this game Manhunt until the Ontario Film Review Board used it as a feather in its own cap: "Look what we're doing for the public. We rated this game R." Guess what? At that point, my son—do you know any of your friends who did not play the game, J?

Mr. Gerry Satschko: No, I do not.

Mr. Nicholas Satschko: They began playing the game Manhunt. Thank you, Ontario Film Review Board, for protecting my son from Manhunt.

That's basically all I have to say. Thank you for your time.

The Chair: Thank you. We actually have minimal time, maybe one question each. Mr. Martiniuk? No? Mr. Kormos?

Mr. Kormos: I'm in agreement with you with respect to section 7, which is what purports to retain censorship powers to the Ontario Film Review Board, which makes this a contradiction of the Glad Day ruling and in all likelihood won't stand.

Chair, may I at this point put a question to legislative research? There is nothing in the statutory provisions of this bill that will make it an offence, in any event, to permit a person under 18, or whatever the age might be, to see an adult movie by a theatre or by a retailer or by a Blockbuster. I'm not aware of a similar provision in the existing law, so could research advise us? What are the statutory provisions that in effect would create a penalty for letting a child have access to a so-called adult film? I don't believe there are any. Could she please give us examples from other jurisdictions, whether that is merely advisory and voluntary compliance? Because my presumption is that it's voluntary compliance in any event.

The Chair: Thank you very much, Mr. Kormos, and thank you, representatives of ROAR, for coming forward.

I now invite our next presenter, Mr. Miguel Aguayo, from the Canadian Hard of Hearing Association, Ontario chapter. Is he here? OK. We'll move to Mr. Gary Malkowski. No one's here. All right.

Mr. Kormos: Gary wouldn't hear you if you called his name anyway, right? Let me check and see if he's outside. Apparently Gary's en route.

The Chair: All right. We'll be in recess until our next presenter, say a minimum of 10 minutes.

The committee recessed from 0929 to 0941.

CANADIAN HARD OF HEARING ASSOCIATION, ONTARIO CHAPTER

GARY MALKOWSKI

CANADIAN HEARING SOCIETY, TORONTO

The Chair: I'd like to call the committee back into session. I would now invite, if he is present, Mr. Miguel Aguayo of the Canadian Hard of Hearing Association, Ontario chapter. We'll have some interpreters come and interpret for us.

Mr. Kormos: Mr. Aguayo is being represented by Mr. Scott Simser.

The Chair: We'll have our first presentation by Mr. Aguayo.

Mr. Kormos: On a point of order, Mr. Chair: We have at the table Mr. Simser, the 9:30 participant, who is here on behalf of Mr. Aguayo of the Canadian Hard of Hearing Association, we have the 9:45 participant, Gary Malkowski, and we have the 10 a.m. participant from the Canadian Hearing Society. Subject to their wishes, I'm wondering if we can't treat the next 45 minutes as one bundle, since they're all seated at the table. While they're not saying the same things or addressing the same issues necessarily, there is some commonality.

The Chair: Understood. Is there consent for that from the committee? That's fine.

Since you have introduced the other presenters, I would also, on behalf of the committee, like to welcome Mr. Gary Malkowski, who I understand was the first individual with a hearing impairment to serve in the Legislature of Ontario, from 1990 to 1995. It's a privilege and an honour to have you, Mr. Malkowski.

Mr. Aguayo, you may begin. You have approximately 15 minutes, or I guess we'll distribute the time evenly.

Mr. Kormos: Mr. Simser.

The Chair: I'm sorry. Mr. Simser. Could you identify yourself? Or I guess you'll be identifying him for us. Proceed, please.

Mr. Scott Simser: Good morning. I'm going to try to speak for myself. I was born deaf. If you cannot understand me, let me know.

The Chair: I can understand you, I'm sure.

Mr. Simser: I was born deaf. I was diagnosed at the age of seven months. The doctor prescribed hearing aids for me. About 10 years ago, I got a cochlear implant, because hearing aids didn't help me any more. I became a lawyer about six years ago and I became an advocate for deaf rights on behalf of the disabled.

In 2000, I went to a Famous Players movie theatre to see a James Bond movie. I had of course gone to movies in the past, maybe once a year or so. I didn't enjoy the movie that much. In those days, most deaf people went to action movies that were very visual, but romance, drama and so on, and comedy especially, most deaf people didn't go to because there was no entertainment value. Anyway, in 2000, I went to see a James Bond movie, and that day I thought, I should be enjoying this. Why should I depend on my family and my friends who can hear to tell me what's going on? I decided to start a human rights complaint, because I knew about technology in the United States called rear window captioning. It's good because it doesn't bother anybody else. It's private, it's right in front of me. There are no captions on the screen; the captions are in front of me. I'd never seen that technology before but I'd heard about it.

I started a human rights complaint against Famous Players, and one year later, Famous Players did something. They set up about five captioned screens in Ontario. I enjoyed it. I loved it. I saw Harry Potter as my first movie I saw captioned. I could understand everything. From then on, I went to many movies, but it wasn't enough. I found that even though there are five screens with the equipment, the captioning in Toronto was often for the same movie. For example, Harry Potter, Star Wars and A Beautiful Mind may have captioning, but the five screens in Toronto only played Harry Potter. There are other movies available with captioning but only one movie is being shown across the city. I don't have very much choice. There are many other movies that are not even captioned at all, because the studios chose not to caption the movies.

We have DVD, we have VHS, we have television. They all have captions. It's not very expensive. Why not start earlier in the process? Start at the beginning: Start with the movies. The same captions could be used all the way to the end. You have a beginning and end of the cycle. Why not start at the beginning?

There are two different groups. Number one is the movie studios: Paramount, Universal, Miramax and so

on. They make the movies. They have the power and the copyright to put captions on their movies. Remember, rear window captioning is invisible. It's part of the program, but it's not on the film. The second group is the movie theatres themselves. They have to set up their equipment for captioning. There's a piece of glass or plastic. I put it in front of me. At the back of the theatre they have a huge board, and that's where the captions run backwards. So when I put the glass in front of me, the captions become in the right order. That's how it works.

You need both the movie studios and the movie theatres to do this. If the movie studios don't caption their films, the movie theatre can't do anything. If the movie studios do caption their films but the theatres don't have the equipment, the movie theatre can't do anything. They need to work together.

0950

Under the Theatres Act, the government has a lot of power. They can regulate the distributors. If a movie does not comply with the Theatres Act, then they can't show the film. It's the same for movie theatres: They cannot display the movie and their licence can be revoked.

Please amend the Theatres Act or the Film Classification Act to say that a movie cannot be distributed in Ontario if it's not captioned and that a movie theatre can lose its licence if it doesn't have the equipment. Please do this for the deaf. Please do this for us.

I think Gary is going to talk about the complaints before the Human Rights Tribunal of Ontario. Cineplex, Famous Players, AMC, Alliance Atlantis, Universal Studios and Paramount Pictures are before the tribunal. We went to the hearing last week. There were 20 lawyers in that room and the three of us deaf complainants—not the three of us here, but me and Gary and a woman named Nancy Barker, who is deaf herself. There was only three of us.

Please help us. Thank you.

The Chair: Thank you, Mr. Simser.

Mr. Malkowski, you may begin as well.

Mr. Gary Malkowski (Interpretation): Thank you, Mr. Chair and the standing committee, for inviting us. I feel like I'm back home again here in this room.

Just to let you know some personal information, I was born deaf, and for over 20 years the government tried to get me to be successful in the auditory-verbal method, but it was a waste of money and time.

It's really important to recognize that 70% of deaf children who receive auditory-verbal training, cochlear implants etc. find that it's not effective in allowing them to learn spoken language, similar to Scott Simser's experience. Some 25% are successful, but access for me is in American Sign Language. It's very important for deaf children to have the opportunity to learn both, American Sign Language and spoken English. But for me American Sign Language was the answer to my education. Again, thank you for allowing me to bring ASL into the House.

I'm going to be reading from the document I have distributed to you.

I'm a deaf victim of discrimination created by the Theatres Act.

The Theatres Act clearly discriminates against persons with disabilities by lacking a clear complaint mechanism that ensures consumers have the opportunity to identify discrimination and accessibility issues in the movie theatre, studio and distribution industries.

The Theatres Act does not clarify which party is responsible for providing captioning in the movie theatre, studio and distribution industries to make movies accessible to persons with disabilities including deaf, deafened and hard-of-hearing individuals.

The Theatres Act excludes persons with disabilities from membership on the Ontario Film Review Board. The OFRB's Web site states it is a community board and its members "vary in age, gender, vocation, cultural background, and sexual orientation." No mention is made of people with disabilities, including deaf, deafened and hard-of-hearing individuals.

The Theatres Act forces me to file complaints with the Ontario Human Rights Commission against the Ministry of Consumer and Business Services, Famous Players, Universal Studios Canada Inc., Alliance Atlantis Cinemas and Cineplex Galaxy at taxpayers' expense. The parties reached an agreement that mediation be presided over by former Supreme Court of Canada Justice Peter Cory this coming year. The movie theatre, studio and distribution industries have a powerhouse legal team, including about 15 lawyers, while I am without a lawyer. I am still seeking pro bono legal services.

Complaints against the movie theatre, studio and distribution industries were successfully referred to the Human Rights Tribunal of Ontario. See the attached press release of April 13, 2005, the National Post article dated April 15, 2005, the press release of October 26, 2004, and the Globe and Mail article dated October 28, 2004.

Complaints against the Ministry of Consumer and Business Services under the Theatres Act and the Ministry of Municipal Affairs and Housing under the Ontario building code were denied by the Ontario Human Rights Commission. I have applied for reconsideration. In the event of the OHRC again denying my complaints, I will continue to appeal to a Divisional Court and up to the Supreme Court of Canada. See the attached OHRC case analysis reports and OHRC's decisions.

Barrier-free measures created by the proposed Film Classification Act, 2005:

The Film Classification Act needs to be consistent with the Ontario Human Rights Code and the Accessibility for Ontarians with Disabilities Act.

The Film Classification Act needs to address which party among the movie theatre, studio and distribution industries is responsible for providing captioning to make movies accessible to persons with disabilities, including deaf, deafened and hard-of-hearing individuals.

The Film Classification Act needs to include membership from persons with disabilities on the Ontario Film Review Board.

We strongly believe that individuals who are deaf, deafened and hard of hearing should have the same

freedom as anyone to attend any showing of any movie in any theatre at any time; be seated anywhere within the theatre with their family and friends; receive equal access to the audible portions of the movie through high-quality captioning; have movies made with captioning so that movie theatres can use equipment designed for captioning; and be guaranteed that the presentation of captioning is consistently reliable.

My top four recommendations are:

(1) That the proposed Film Classification Act be amended to ensure that both new and existing movie theatres provide rear window captioning in each screening auditorium, meaning the theatre owners.

(2) That the proposed Film Classification Act be amended to state that a movie may not be shown in Ontario unless it has rear window captioning installed into the film by its studio or distributor so that the movie theatre owner may effectively use its equipment designed for such use.

(3) That the proposed Film Classification Act be amended to include the membership of persons with disabilities on the Ontario Film Review Board.

(4) That the proposed Film Classification Act be amended to include a clear complaint mechanism to ensure that consumers have the opportunity to identify and have resolved discrimination and accessibility issues in the movie theatre, studio and distribution industries.

I'd like to now turn it over to Lori Archer from the Canadian Hearing Society.

Ms. Lori Archer: Thank you, Gary, and good morning, everyone.

I think I'm still slightly out of breath from running through the building chasing Gary up the steps, but I'll do my best.

My name is Lori Archer and I am deafened. I feel I am personally very aware of communication and accessibility issues, particularly relating to the deaf, deafened and hard of hearing. I used to be hearing. I became deafened at the age of 23. I've raised three hard-of-hearing sons, and I currently work in a deaf office.

1000

I am here as a volunteer board member of the Canadian Hearing Society. I am currently serving on the provincial board of directors, in addition to the community development board of the region of Peel Canadian Hearing Society. I first became involved with CHS by taking hearing help classes that also incorporated lip-reading assistance. I then went on to take ASL, American Sign Language, classes for interest's sake many years ago, before I began working in a deaf environment two years ago. I have volunteered in many different capacities, including giving presentations with a hearing health care counsellor on how to communicate with the hard of hearing.

I consider myself somewhat of an expert here after becoming deafened myself and raising my three hard-of-hearing sons. While, many times in the past, I might not have spoken up for myself and my individual requirements, I found I had to speak up and advocate for my children. Educating and advising people of the best communication methods and my sons' requirements became a way of life for me.

I was fortunate to benefit from some of the many programs that CHS has to offer. The hearing help classes taught me many coping strategies in addition to developing my skills in lip-reading and learning to watch for visual clues. The Canadian Hearing Society is a community-based, multi-service, non-profit agency serving the deaf, deafened and hard-of-hearing communities throughout Ontario. CHS was founded in 1940 and is the only agency of its kind in the province. It employs approximately 450 individuals in 13 regional offices and 16 sub-offices. A significant part of CHS's early mandate continues to this day, namely, advocating for and promoting the rights of the deaf, deafened and hard of hearing.

Today I am here to speak to you about the importance of accessibility for the deaf, deafened and hard of hearing in movie theatres.

I grew up with a love of going to the movies. When I was young, there was nothing more enjoyable than seeing the latest Hollywood extravaganza on the big screen, larger than life. I recall my parents taking me as a little girl to see Oklahoma and The Flower Drum Song. It was sheer magic, and back in those days, I could even enjoy the music.

The last time I saw a movie in the theatre and knew what was being said, was actually able to follow the dialogue, was in 1974. That was before my hearing loss developed. For 30 years I had not been able to enjoy a movie in the theatre, until last year. That was when I first saw a movie equipped with rear window captioning. What a joy. I was able to follow the entire dialogue for the first time in 30 years. Prior to that, I would still occasionally go to see a new release on the big screen, and then patiently wait till it came out on video or DVD, with captioning, so I would know what was said and what was really happening.

Try to imagine lining up and paying your $12 to see a movie you are really looking forward to, only to have to watch just the picture with no sound. That is what it is like for a deaf person. For a deafened or hard-of-hearing person, yes, there may be some sound, but no clarity. For me, I find I have to turn my hearing aids down as the volume is so loud, but I still cannot make out the words. It is similar to having a radio on but slightly off the station. You can hear something, but not enough to distinguish actual words. It's just noise with very little clarity, mostly garbled sounds.

The only movie I have actually seen with rear window captioning is a Harry Potter movie. I was thrilled, when accompanying my friends and children, that it was actually available for me to see and understand with rear window captioning. This is a necessity for all movies to be accessible to the deaf, deafened and hard of hearing. I believe everyone in those three groups should be fully able to access movies in the theatre as their human right, the same as hearing people can sit down and enjoy a movie completely.

According to Statistics Canada in 2001, there were 1.47 million Ontarians over age 65 with hearing loss. By 2026, that number will rise to 2.9 million, a 100% increase. Furthermore, according to Health Canada, approximately 10% of the general population has a significant hearing problem. Also, at least 80% of the elderly in nursing homes have impaired hearing. The CHS 2001 awareness survey of October 2001 revealed that 23% of adult Canadians—almost one in four—report having some degree of hearing loss. Of these, one in four are under the age of 40 and almost half are between 40 and 60 years old. These people are not retirees; they are adult working Canadians.

Hearing loss is on the rise in part due to our aging population; however, hearing loss is also occurring at younger ages because of exposure to an increasingly noisy society.

There are two fundamental issues at the heart of providing full access in theatres and films for the deaf, deafened and hard of hearing. Number one is the issue of safety. Typically, there are no visual fire alarms and emergency alert systems for the deaf, deafened, and hard-of-hearing callers or respondents in movie theatres. Most movie theatres lack public announcement systems for alerting the deaf, deafened and hard of hearing to emergency situations.

The second issue is the lack of rear window captioning in auditoriums, thereby denying deaf, deafened and hard-of-hearing moviegoers access to this form of entertainment. The deaf, deafened and hard of hearing deserve to enjoy the same movie entertainment as all individuals in Ontario. Not making the required effort to provide 100% accessibility in movie theatres is a direct contravention of the Ontario Human Rights Code. It is actually discriminatory against the deaf, deafened and hard of hearing.

Access for the deaf, deafened and hard of hearing involves the provision of TTYs—teletypes/telephones for the deaf—rear window captioning and the use of FM systems. In the interest of safety, movie theatres need to be accessible and able to provide TTYs just as they provide pay phones for the hearing. What would you do in an emergency if you were unable to use the phone to call the appropriate person or service? How would you summon an ambulance, for instance, if you could not hear or speak? You would need a TTY. The deaf person types in their request and the Bell relay operator conveys it. In this day and age, when almost everyone is walking around communicating with a cell phone for immediate and complete accessibility, it is obvious that the deaf and deafened require communication with a TTY.

FM, infrared and audio loop sound amplification systems in theatres would enable access for the deafened and hard of hearing. These systems assist people with hearing loss by bridging the sound to the individual's ear, helping overcome the problems of distance and background noise with which hearing aids cannot cope. These systems would enable the deafened and hard of hearing to listen to and enjoy the dialogue in movies.

By the way, hearing aids are just what they say they are: an aid to hearing. They do not, unfortunately, provide complete and full hearing. It is not like putting on glasses and restoring or correcting your vision. They aid your hearing by amplifying sound; they do not restore it to normal limits. Background noise is often extremely detrimental to the hearing aid user. Extraneous noise can drown out the conversational sounds you want to hear and amplify all those annoying little background sounds, such as the air conditioner humming or the refrigerator running. When riding in a car, for example, the sound of the engine, the air conditioner or the defroster are all magnified over the sounds you are struggling to hear and comprehend. It can really be a guessing game to try and follow a conversation.

My own personal perspective is that the deaf, deafened and hard of hearing can do anything that anyone else can do except hear. In order to provide them with their human rights, accessibility issues need to be addressed. This is paramount to providing equality to a segment of society that has traditionally been overlooked and put at a distinct disadvantage in the everyday world. I would like to encourage the Ontario Film Review Board to enlist representation from the disabled persons community. All persons deserve to be treated with respect, equality and accessibility.

1010

If I may, I want to add one little thing that's not on here. As you'll notice, I use my voice, I wear hearing aids, and I am learning sign language. I was not able to follow what Gary had to say, because I'm not adept enough in ASL. I'm so far across the room from the interpreter that it's very difficult for me to lip-read and hear, and there's no real-time captioning.

If anyone is interested in finding out more about real-time captioning, it's amazing. All the words are typed, as if you were in a court with a court stenographer. They're on a big screen and everybody can read them. We have that as full accessibility at all the Canadian Hearing Society committee and board meetings. If you'd like a demonstration, come out to our open house on April 28 and you can see a live demonstration of real-time captioning. That would be full accessibility for the deaf, deafened and hard of hearing also.

Thank you for the time to present these views.

The Chair: Thank you, Mr. Simser, Mr. Malkowski and Ms. Archer. We have about 10 minutes for questions. I'll start with the government side.

Mr. Bob Delaney (Mississauga West): Thank you very much for an absolutely fascinating presentation this morning. I'd like to ask you a number of clarification questions to help me understand your wishes in a little more detail. In your view, is access for the hearing-impaired related to any specific class or category of film? For example, are films rated PG or R to be treated the same in regard to access by the hearing-impaired?

Ms. Archer: If films are rated PG, I take it that those are for children under the age of 14?

Mr. Delaney: Like Parental Guidance or General or—

Ms. Archer: There are some movies that would be suitable for children, and there are obviously deaf and hard-of-hearing children who would also require captioning. I believe they need to be accessible for everyone.

Mr. Delaney: Would the same apply to films that are restricted in content, for example, Parental Guidance or adult or, hypothetically, XXX or something like that?

Ms. Archer: If they're not accessible for everyone, then you're separating accessibility for people. Hearing people have full accessibility to movies in all different grounds, correct?

Mr. Delaney: I'm asking questions for clarification here.

Mr. Malkowski (Interpretation): If I could respond, I would like to clarify. I just need clarification from you, if I may. Are you suggesting that there should be some limitations on movies for deaf, deafened and hard-of-hearing people? Is that what you're suggesting? Or are you suggesting that all films should be captioned so that any individual can enjoy that type of entertainment? I just need some clarification.

Mr. Delaney: That's essentially the question: Should all films in all categories be made accessible for the hearing-impaired?

Mr. Malkowski (Interpretation): Yes, it should be equal for everyone. Everyone should have a right to see the movie they choose. Why should they be forced to watch one movie and not another? It should be equal for everyone.

My point, though, is that the problem with the Theatres Act as it stands now is that it does not deal with accessibility issues. For example, the Ontario Film Review Board says nothing about accessibility issues. It does not talk about sensitivity issues toward persons with disabilities. It's silent on that, doesn't speak to that at all. There's nothing in terms of accommodations within this act. It just ends up being referred to the consumer and business ministry to file a complaint with them, and then they refer off to the Ontario Human Rights Commission to file a complaint with them. It takes many, many years to resolve the issue until finally something is made accessible. That's my point. The board needs to include members who sit on the Ontario Film Review Board to speak to access issues, to speak to the fact that movies should not be offensive to persons with disabilities, that type of thing.

Mr. Delaney: Just two short follow-ups. Should the same apply to film trailers shown in theatres and to commercials shown prior to a movie?

Mr. Malkowski (Interpretation): Of course. Any type of commercial, any message that's spoken, should have captioning. That would be the ultimate goal: to have equal access for everyone. If you suffer a hearing loss at some point, you deserve to have access to all of the information that comes to people in movie theatres.

Mr. Delaney: Finally, should the onus on providing access lie with the film producer or with the exhibitor, the exhibitor being the theatre chain and the producer being the entity that releases the movie?

Mr. Malkowski (Interpretation): Both. It's a shared responsibility. I'll start to add to that, if I may.

The Chair: Thank you to the government side for your questions. I now move to the Tory party.

Mr. Gerry Martiniuk (Cambridge): I have a philosophical question which would arise in all cases of this kind where we have persons with disabilities who are neglected because of the circumstance. Who should pay for the remedy? It seems to me that you're indicating it's user pay; in other words, the person who is showing the event or producing the event should pay, and not the state. I may differ with that. Who should be remedying the situation? The state, in terms of money, or should it be user pay?

Mr. Simser: The movie theatres and the movie studios are huge multinational corporations. For example, Viacom makes $20 billion a year in revenue. They can afford captioning or captioning equipment. It's probably 0.0000001% of the expense of making a movie. Another point is that the government of Canada can give a tax break to the movie industry for captioning or the equipment. For example, in the United States, a senator has proposed a tax break for American industries, movie studios and theatres. It hasn't passed yet, but a senator is proposing it. That's a good idea.

Mr. Malkowski (Interpretation): If I could add as well, do companies want 25% of the business from deaf, deafened and hard-of-hearing people? It makes good business sense, if they're going to make revenue. Deaf, deafened and hard-of-hearing people would pay to go into a movie theatre to enjoy a movie if it was made accessible to them. Everybody wins. It's their decision not to provide captioning to us, and that's something the government needs to include. There needs to be some kind of enforcement mechanism. The problem with the Accessibility for Ontarians with Disabilities Act, for example, is that it's silent in terms of applying the same principles to theatres or studios. That's why I think there should be an amendment to include accessibility issues. It's in the spirit of accessibility as it applies to the Accessibility for Ontarians with Disabilities Act.

The Chair: Thank you, Mr. Martiniuk. Mr. Kormos?

Mr. Kormos: Thank you kindly. I think this three-party submission puts the ministry on notice, and it's a good thing that there are political staff here. There are only three here at the moment. Four? OK. At least three. The civil service, who should be here, will undoubtedly send the message back.

The ministry has received a four-month extension from the court on compliance with the court's ruling. This raises a very important issue about incorporating accessibility issues into this film classification legislation. This committee is going to have to debate whether or not we're prepared to report back to the House as readily as we thought we were going to, in terms of the need to consider incorporating accessibility as one of the classification criteria. We've been told that the consideration of Bill 118, the ODA, didn't address film/video, so the ball is clearly in our court.

1020

I want to ask these folks. You're obviously suggesting theatres, where movies are publicly presented. Are you talking about a Blockbuster as well and being able to rent a DVD? That's knowing that most DVDs, in my experience, have subtitles, captioning; it seems to be part of the DVD technology. But would you go one further: movies that are presented for public display plus movies that are made available to the public through places like Blockbuster? Should both have the accessibility incorporated into them?

Mr. Simser: Yes.

Mr. Kormos: With respect to Mr. Delaney and his XXX films, there isn't much dialogue on those soundtracks anyway. Well, think about it. I don't presume it's going to be much of a burden for the manufacturer; the occasional expletive caption is not going to be extremely difficult for that filmmaker.

I'm interested in the technology, though. You talk about RWC, which is seat by seat, sort of like the movie in an airplane, versus a subtitle on the screen. I'm suggesting that the interest in subtitles might go to a far wider community than simply the community of deaf people. As we approach middle age, some of us, we find it more and more difficult to literally hear the dialogue in movie theatres as we're overwhelmed by sound scores and so on. If you saw the movie Trainspotting, without subtitles it was impossible for anybody to understand the dialogue.

I'm wondering if legislative research can get us—and you might want to comment on it—some information on the state of the technology around RWC and how it is applied to a film versus a DVD format. It's disappointing that nobody in the film distribution industry saw fit to come to these hearings so far. Maybe they'll wish they had, which is fine by me, Chair. But if research could get us some of that material, and perhaps you folks will want to comment on the ideal technology. Is the RWC preferable to an on-screen caption? Yes? Because it seems strange to me that you would have to look down in front of your seat and then up to the screen, but tell us about that, please.

Mr. Malkwoski (Interpretation): The National Captioning Institute's research studies have shown that children developing literacy skills and people who are learning English as a second language benefit greatly from captioning, and also that people who have captioning at home or have exposure to that tend to have higher literacy and education abilities.

If you're speaking about a private type of captioning, like rear window captioning, that is one way. Another technology would be similar to a foreign film where they have added the subtitles.

DVDs do have choices. You can have either French, English or Spanish captioning on a DVD you rent. Video stores like Blockbuster are at just about 100% now where they're providing everything with captioning.

But we are speaking about theatres not having captioning. Figure that out. Why are they so resistant? They have billions and billions of dollars in profit. They are filthy rich. We're talking about 20% of the population not being able to benefit from and enjoy a movie. Think of the profits they're losing. Instead of spending money on litigation, let's spend money on adding captioning and look at it as a business opportunity.

The Chair: Very quickly, if you might, Ms. Archer.

Ms. Archer: I was just going to mention that I think the rear window captioning in the movie theatres is preferable to the words on the screen, because it's personal. It sits down right in front of you and it doesn't interfere with anybody else in the movie theatre trying to watch the movie. I think a lot of people would object if they were going to watch a movie and there was dialogue across the bottom of the screen.

Whenever anyone comes to my home and they want to watch a movie or a television program with me, they have to get used to seeing the captioning, because I only catch maybe 10% or 20% max of whatever is playing without it. At first, people usually say, "Wow, I didn't see what was going on. I was so busy reading the words, I missed the picture." You know what? Unfortunately, if you're hard of hearing, you watch the picture and you don't know what's happening, so you have to watch those words. It takes a little bit a practice, and pretty soon you realize you're kind of watching the picture and reading the words at the same time. It's not as great as being able to do it otherwise, but it's preferable to not catching it at all.

In the movie theatre, that works fairly well. It is a nuisance if you're watching baseball, because it goes right over the baseball scores, but if you have a new high-tech device at home, you can probably move the captioning to the top or over to the right. I think the movie theatre would be ideal with rear window captioning, because it doesn't interfere with other people, and you're still able to catch the dialogue and pick up on what's happening yourself and enjoy the thrill of seeing a new release on a big screen and know what's happening.

The Chair: Thank you very much, Ms. Archer, Mr. Malkwoski and Mr. Simser, for your deputation today.

CANADIAN CIVIL LIBERTIES ASSOCIATION

The Chair: I would now invite our next presenter, Noa Aviv, of the Canadian Civil Liberties Association. Ms. Aviv, as you take your place, I invite you to testify for approximately 15 minutes. Any time you leave remaining afterwards will be distributed evenly among the three parties for questions. Please identify yourself and your organization for the purposes of recording in Hansard, and your accompanying deputant should do the same when he speaks as well.

Ms. Noa Mendelsohn Aviv: Good morning, members of the committee. My name is Noa Mendelsohn Aviv, and I am a policy analyst for the Canadian Civil Liberties Association, a member of our legal team and a foreign-trained lawyer. I'm here with my colleague Motek

Sherman, who is a student at law, also working on the legal staff of the Canadian Civil Liberties Association.

I'm very pleased to be here this morning on behalf of the CCLA. I would like to think that our organization is well known to everybody, but in case it's not, a brief review of our organization: The CCLA is a national organization with more than 7,000 individual members, seven affiliated chapters across the country and some 20 associated group members which themselves represent several thousands of people. Our objectives, in brief, include the following: to promote legal protections against the unreasonable invasion by public authority of the freedom and dignity of the individual and to promote fair procedures for the resolution and adjudication of conflicts and disputes.

I am particularly pleased to have the opportunity to discuss with you the implications and consequences of Bill 158 as it now stands, as I am hopeful that in this committee's vigorous work and analysis you will reach certain inevitable conclusions about this bill and about its prior approval scheme. While a great deal of the content and workings of the new scheme remain unclear, since at present it seems to be determined mostly through regulation, it is fairly clear that Bill 158 contemplates a system of prior restraint censorship by requiring films intended for the public's viewing to be approved before they may be distributed or exhibited—most films, that is, and we'll get to that shortly.

1030

In addition to what the bill shows us as its intentions for a prior restraint scheme, recent amendments to the Theatres Act regulations—amendments that were made following the Glad Day judgment in July of 2004—as well as correspondence that occurred between our organization and the minister, have also led us to the conclusion that the intention seems to be to retain a requirement for prior approval of films that will be viewed by the general public. It is this scheme which I wish to discuss today.

In the first section of my presentation, I hope to appeal to the committee's legal sensibilities, to your rational side and to your commitment to fundamental rights and freedoms by showing that the prior approval scheme contemplated by this bill is not actually necessary and, in fact, is harmful in a free and democratic society. To emphasize this point, I will bring in examples from other provinces and territories and from within Ontario itself.

The second section of my presentation is the legal side—the first section was the policy side—and in it, I hope to appeal to the committee's respect for the law and for the Canadian democratic structure by demonstrating how the judgment of Justice Juriansz in the Glad Day decision expressly considered a prior approval scheme such as the one contemplated by the bill and found this scheme to be unconstitutional.

Starting with the policy section: To call it what it is—and Justice Juriansz had no problem doing so—the prior approval scheme contemplated by Bill 158 is a form of prior restraint censorship. This is a serious curtailment of freedom of expression. In a free and democratic society, the basic principle is that people should be free unless there is a real reason to restrict that freedom: unless they are causing real harm to others.

In the context of film censorship, the premise is the same: In a democracy, people have the right and the need to communicate with each other. "Freedom of expression," as Justice Juriansz said, "is central to our identity as individuals"—I think he was citing Justice Binnie—"and to our collective well-being as a society." Therefore, interference with this freedom is harmful to our most basic values. For this reason, judges, philosophers, thinkers and politicians have firmly established that government should not tell individuals how to communicate, require government permission to communicate or otherwise interfere with these communications unless such interference is absolutely necessary.

In the context of Bill 158, the requirement that people submit their films for prior approval intrudes on their vital freedoms, yet there is no reason to believe that this is necessary. There is no reason to believe, as Justice Juriansz pointed out, that the normal processes of law that are currently in existence, such as the criminal justice system, are inadequate to deal with any problems that may arise or be anticipated.

This point is further proven if we look at other provinces and territories outside of Ontario. The province of Manitoba—again, as Justice Juriansz pointed out—abandoned its system of prior restraint for films and videos. I don't think he mentioned the date, but that was back in 1972. Manitoba relies only on subsequent prosecution to deal with images that it finds problematic, and yet no one has suggested that the residents of Manitoba are going to hell in a handbasket. Despite the lack of this prior restraint scheme, there has been no evidence to show that the residents of Manitoba have suffered any negative consequences or have been exposed to more harmful films and videos than have the residents of Ontario. There's no reason to believe that Manitoba society differs in any relevant way from Ontario society, so how can we understand that Manitoba is managing just fine without a prior approval scheme? The only conclusion is that the scheme is not necessary.

Based on further research, although we had very little time to do it, it seems that Manitoba is not the only province without a prior approval scheme for films. This appears also to be the case in Quebec and Prince Edward Island, not insignificant chunks of our country, and to the best of our knowledge, there is no prior approval scheme either in Newfoundland and Labrador, Nunavut, Yukon or the Northwest Territories. Again, life in these provinces and territories, to the best of our knowledge, has carried on very nicely without a prior approval scheme, so how is this scheme necessary? And if it is not necessary, it is not justifiable. In fact, we might even suggest that the money, time and resources that might be saved by getting rid of the prior approval scheme could be put toward the many other laudable goals that provincial governments may wish to pursue.

Even in Ontario itself, if we look at other expressive media, as Justice Juriansz did in his decision, within the borders of this province, we will see that books, plays, art exhibitions, concerts and other forms of performance do not have to be pre-approved before being shown to the public. Even in the category of films, which is our topic here today, there are entire categories which do not have to be submitted to the board for approval and may be distributed and exhibited without requiring prior censorship.

Outside of the films made for educational, instructional, advertising or demonstration purposes, for medical education or films that are part of a concert or theatrical stage production, the exemption also exists for films shown at a film festival, a public art gallery and a public library. All of these categories of film do not require prior approval, although I should mention that the law does include certain restrictions and exceptions.

The fact is that here, too, while all of these films may be shown at the Toronto International Film Festival, to name one example, no one has suggested that we are going to hell in a handbasket. If these categories of film don't need the board's approval, there is no reason to believe that there is any benefit to society to require that other films need this board's approval. On the contrary, we've already discussed the deleterious effects of the censorship scheme, which harms our fundamental freedoms.

To bring forward one last and very specific example on this point, we can look to the media of newspapers and television news. As the committee may be aware, these media as well do not require prior approval before they are shown to the public. If there is any concern that a newspaper has violated the law, it can be prosecuted or sued after the fact. This is the case, this lack of a need for prior approval, regardless of the content that the newspaper or the news is showing. If, for example, a newspaper wants to comment on world affairs, defence policy or even defence documents, some of which could be highly secret and the disclosure of which could be an offence, there is no requirement for prior approval. What conclusion can we reach from this? It seems then that the community that seeks to censor films considers disclosure of sexual activity a greater threat to the public interest than disclosure of defence secrets.

To summarize this section, there is no justification for a prior approval scheme. It interferes with our vital freedoms when there is no reason to believe it is necessary, and there are many examples, as we've discussed, to show that it is unnecessary.

As for the legal side, though I would be rather happy to have you go on my say-so alone, I'm sure the committee has not forgotten the reason we are here, and that is that a certain Justice Juriansz, formerly of the Superior Court and now with the Court of Appeal for Ontario, struck down the prior restraint censorship scheme in the Theatres Act and ruled it unconstitutional, and this decision was not challenged on appeal.

In the face of such a judgment, I imagine that the committee will wish to examine the ruling very carefully, if it hasn't already done so. After all, once a judge has found a scheme to be unconstitutional, to make a new law that brings an element of that very same scheme that was found to be unconstitutional would be at best a grave error, and at worst it would be a gross violation of the rule of law, which is a fundamental principle in democracies that says that even our lawmakers must obey the law, and the charter is the supreme law in this land. So when a judge rules that a scheme is unconstitutional, the lawmakers cannot simply say, "Well, that may be, but we still don't like it." This would violate the rule of law if the lawmakers were to keep that scheme alive.

For the sake of clarity, in a moment I will direct your attention to the Glad Day judgment and urge members of the committee not to rely on my comments alone but to look at the totality of this judgment, in particular the summarizing statements of Justice Juriansz's analysis and the way he builds up to this analysis and to this conclusion. From these, one cannot escape the conclusion that a prior approval, what he calls a prior restraint scheme, requiring films for the general public to be submitted for approval, has been found to be unconstitutional.

1040

The discussion of the prior restraint scheme, if anybody has the decision in front of them, begins in paragraph 151 when he talks about the prior restraint scheme for the general public as follows:

"The more fundamental question"—and I emphasize "fundamental"—"remains: Has the government established that prior restraint system is reasonably necessary to achieve its legislative objective? The government led no evidence to support its position."

From here, the judge raises many of the arguments and examples discussed above, and I borrowed freely from them in my policy analysis, as indeed many of these arguments were raised in CCLA's submissions to the court. I will offer in a moment a mere sample of the judge's comments to illustrate his discomfort with the prior restraint scheme and his total rejection of this scheme as it relates to films intended for the general public.

The Chair: You have about two minutes remaining, Ms. Aviv.

Ms. Mendelsohn Aviv: We'll keep it short, then.

Mr. Kormos: Mr. Chair, on a point of order: Seeking unanimous consent to permit them to finish their submission plus five minutes for questions and comments. We've got lots of time today.

The Chair: I'm not hearing unanimous consent.

You have two minutes remaining, Ms. Aviv.

Mr. Kormos: You didn't ask for it, Chair.

The Chair: Do I have unanimous consent for that? No. Not having it, please proceed, Ms. Aviv.

Ms. Mendelsohn Aviv: In light of the above, what I would then do is urge members of the committee to look themselves at paragraph 154 of the decision, which talks about the scheme in Manitoba; paragraph 155, which talks about other media; paragraph 156, which talks again

about Manitoba; and paragraphs 157, 158, 160, 162 and 173, where he rules as unconstitutional what he calls the entirety "of the pure prior restraint scheme."

Mr. Kormos: You're talking about section 7.

Ms. Mendelsohn Aviv: I'm talking about what has now become section 7 of Bill 158.

Mr. Kormos: The bill before us.

Ms. Mendelsohn Aviv: At the time, it was the Theatres Act.

Mr. Kormos: That's what maintains prior restraint in this new legislation?

Ms. Mendelsohn Aviv: That's correct. Thank you, Mr. Kormos.

Mr. Kormos: That's what's going to contravene the charter in the next challenge, right?

Ms. Mendelsohn Aviv: I would expect so.

In light of the above, our organization has corresponded with the minister, and two themes emerged from this correspondence. Firstly, the intention to date has been clear, and that is to retain a prior restraint scheme. We hope this committee will change that intention and get rid of the prior approval scheme in the bill. Secondly, Mr. Alan Borovoy of our organization called the minister on his failure to address the unconstitutionality. Mr. Borovoy cited for him chapter and verse from the decision, as I would have liked to have done for you today, to show his sources as to why the scheme was found to be unconstitutional and called on the minister to cite his sources for maintaining this scheme and how he has complied for the judgment. That failure has not been answered to date.

To conclude, it is incumbent upon the Legislature of this province to do away with any prior restraint scheme that requires films for the general public to be submitted for prior approval. It would not be a difficult amendment to Bill 158, and it is necessary. We understand that prior restraint is being considered by Bill 158, and that will be harmful and unnecessary. Moreover, after Glad Day, to re-enact this unconstitutional scheme would undermine the rule of law and, frankly, it would be disrespectful to the charter, to the judiciary and to our democratic constitutional system.

The Chair: Ms. Aviv, I'd like to thank you on behalf of the committee for your deputation from the Canadian Civil Liberties Association. I would also like to say that we very much value and welcome your contribution. Please feel free to submit any and all written materials to the clerk, which will be distributed to all parties.

ENTERTAINMENT SOFTWARE ASSOCIATION OF CANADA
RETAIL COUNCIL OF CANADA

The Chair: I'd now like to invite our next presenters, who will present jointly: Mr. Doug DeRabbie of the Retail Council of Canada and Danielle LaBossiere of the Entertainment Software Association of Canada. If they are here, would they please come forward?

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): While they're coming forward, I just wanted to make a note on the last presentation as I appreciate it. The judge actually said in section 98 of his response, and I read one sentence only from this: "The constitutional validity of a statutory provision requiring films to be submitted solely for the purpose of classification is not an issue in this case."

Mr. Kormos: It means he didn't rule on it.

Mr. McMeekin: "Is not an issue in this case."

Mr. Kormos: It means he didn't rule on it.

Mr. McMeekin: To leave the impression that he was suggesting that was the case is, at best, not complete.

The Chair: Ms. Aviv, I would suggest that you respond by correspondence or perhaps in the hallway afterward.

Mr. Kormos: So McMeekin can put an erroneous comment like that on the record and these people can't respond, telling him that he's full of hot air.

The Chair: Mr. Kormos.

I'd now invite our next presenters, Mr. DeRabbie from the Retail Council of Canada and Ms. LaBossiere from the Entertainment Software Association of Canada. Ms. LaBossiere and Mr. DeRabbie, just to inform you, you have approximately 15 minutes to present. Any time left over afterwards will be evenly distributed among the parties for questions. Please begin.

Ms. Danielle LaBossiere: I'll just provide these to the clerk. This is my submission.

Good morning, everyone, and thank you very much for giving us the opportunity to present to you this morning. My name's Danielle LaBossiere and I'm the executive director of the Entertainment Software Association of Canada. We're a newly formed trade association that represents video game publishers. Most of the big publishers in Canada, Microsoft, Xbox, Sony PlayStation, Nintendo, EA and a whole variety of others, are members of our association.

I want to keep my comments fairly brief, seeing as there are two of us sharing the time here. First and foremost, I want to say that we are happy to lend our support to Bill 158 on behalf of the industry. I'd like to start by providing a little bit of context for who plays video games and a little bit about how video games are rated. I think there are a lot of misconceptions now, that it's all young boys playing video games in their parents' basement, when in fact that's not actually the case.

First of all, let me give you a sense of the industry in Canada. This is a very important industry for us. Sales growth in Canada of entertainment software products increased by 31% in 2004, which is tremendous. In terms of retail revenues, that's a significant amount of revenue for the economy. We're also becoming a bit of a centre of excellence in terms of the development of video games in Canada. We have two of the largest development studios in the world located in Vancouver and Montreal. In Ontario, there are a number of very important developers and publishers that operate here and create jobs here. Certainly schools like Sheridan College are among

world leaders in terms of training digital animation students to grow up and have jobs in this industry. So this is definitely a key part of our economy.

Who plays games? This is an important thing to note: The average age of the person who plays video games today is 29 years old, and it's getting older. Thirty-four per cent are under 18, 46% are between 18 and 50 and 17% are over 50. The average age of video game buyers is 36. We can say that a vast majority, between 80% and 90% of people who actually purchase video games today, according to the research we've done in North America, are over the age of 18. The vast majority of our market is in fact adults.

In terms of the games they play, if you look at media reports, you might think that every video game out there is violent or inappropriate for children, but in fact only 18% of games that were sold in Canada in 2004 were rated M; 82% were rated E for Everyone or T for Teen. In addition to that, 70% of the 20 top-selling video games were rated E or T.

I'll talk a little bit about the way games are rated currently. Since the inception of the video game industry, we've been self-regulated. In 1994, the trade association in the US started the ESRB, which is the Entertainment Software Ratings Board. This is a self-regulatory body that independently rates and enforces ratings, advertising guidelines and online privacy principles.

1050

In terms of ratings, there are a number of different categories. There's Early Childhood, E for Everyone, E10, a new category for children 10 and older, T for Teen, M for Mature, and AO for Adults Only. In terms of the percentages of games rated, it is very similar to the percentage of games sold: The vast majority are rated E, E10 or T for Teen.

According to the research we've done, 78% of parents are aware of the ESRB ratings, 70% of parents use the ratings every time or most of the time when buying video and computer games for their families, and an overwhelming majority of the time, 83%, parents agreed with the ratings, while in another 5% of the time they thought the ratings were too strict. I think that's evidence that this rating system is effective, that it works. Parents and consumers are aware of it. As an industry association, we're commissioning research unique to Canada to quantify those numbers in this country as well, but we believe they're very similar to the numbers we've seen in the US.

We certainly support this legislation, because it provides a good compromise between the needs of industry and retailers and the concerns that have been expressed by government in terms of keeping inappropriate material out of the hands of children. That's certainly something that we as an industry have advocated. We're working very hard, in partnership with the Retail Council and of our own volition as well, to try to implement programs, do public service advertisements. You'll see that on the back page of this submission I've included a copy of one of our public service advertisements, which has appeared in a number of different publications. We're really making best efforts to try to prevent M- and AO-rated games from being sold directly to children. This legislation certainly goes a step further, in terms of providing legal penalties for retailers and corporations selling inappropriate material to children.

I know one of the concerns that have been expressed about the rating system is the fact that it's an American rating system. In fact, it's an objective rating system that was developed with the assistance of academics and educators, and the ratings are applied by independent raters who have no ties to the video game industry. They view footage of the video games—there are several raters who view every game—and then establish the rating. To appease the concern about the lack of Canadian involvement in the rating system, I'm working with the ESRB and the IFCCC, which is the interprovincial coalition on film classification, to establish a mechanism to provide Canadian input into the ratings process. We're going to establish a committee, and we'll definitely have a means for Canadians to raise issues or concerns about the rating system. That's something we're hoping to finalize by the end of the month.

I won't speak too much longer on this, because Doug will focus on a joint initiative we've undertaken, but I just want to say again that we are very supportive of this legislation. We think it adequately addresses the concerns of industry in terms of a level playing field across the country, consistent information for parents, and generally just not reinventing the wheel. These ratings have been in place since 1994, they're working, and parents are aware of them. We're definitely in support.

Mr. Doug DeRabbie: Thanks very much, Danielle. My name is Doug DeRabbie; I'm the director of government relations for the Retail Council of Canada. Thank you for the opportunity to appear before you today. I will try to move through the presentation quickly so we have some opportunity for questions.

The Retail Council of Canada has been the voice of retail since 1963. We represent an industry that touches the daily lives of most people in the province. Our 9,000 members represent all retail formats: mass merchants, independents, specialty stores and on-line merchants. Approximately 90% of our members are small independent retailers, and over 40% of our membership is based in Ontario.

The retail industry is a dynamic and fast-paced industry. With almost $129 billion in annual sales, over 85,000 storefronts and over 760,000 employees, the retail sector truly touches the daily lives of most Ontarians.

Before discussing the legislation itself, I would like to begin by saying that retailers agree with the Ontario government regarding the policy issue of preventing the sale or rental of adult material to children and are committed to assisting parents in making informed entertainment choices for their families regarding the purchase or rental of interactive video and computer games. That is why, at the request of our members, Retail Council of Canada, in conjunction with ESA Canada and the ESRB,

launched the national rollout of Commitment to Parents in October 2004. This initiative limits the sale or rental of Mature or Adult-Oriented video games to children through a system of video game ratings on the packaging and point-of-purchase controls.

RCC was pleased to work together with Ontario's Minister of Consumer and Business Services to launch Commitment to Parents last fall. On behalf of RCC and its members operating in Ontario, I would like to thank the minister again for his tremendous support of this initiative. Indeed, the minister is to be commended for his leadership and his commitment to working with industry on this important matter. I would also like to thank Mr. Ted McMeekin for his support and his tireless efforts to promote to parents the fact that they now have access to the information they need to make informed and appropriate entertainment choices for themselves and for their families.

Through Commitment to Parents, participating retailers check age identification to ensure that Mature-rated video games are not sold or rented to customers under the age of 17. In addition to being an extension of retailers' commitment to customer service, Commitment to Parents will also better equip parents to decide what's appropriate for their children. As part of the program, the video gaming industry and retailers launched a public awareness campaign to educate and inform parents about the ESRB rating system. The OK to Play campaign includes point-of-purchase displays, informational brochures and rating cards for parents.

In this instance, we all share the same goal: to support and empower parents, to ensure they have the information and tools they need to make their decisions about what is appropriate video and computer game programming for their children. We start with the premise that the best control of entertainment is parental control, and there is no better place than a retail store for parents to control the content of the video and computer games to which their children have access. Above all else, Commitment to Parents is about retailers helping parents to make more informed entertainment choices for their families through a parental empowerment program that combines ratings education with voluntary ratings enforcement.

To provide you with a quick update on how the program is performing, at the launch last October the following retailers were the first signatories to the national retailer code: Hudson's Bay Company retail outlets the Bay and Zellers, Best Buy, Blockbuster Canada, EB Games, Future Shop, Radio Shack, Rogers Video, Toys "R" Us and Wal-mart. Since then, five more retailers have signed on: Sears Canada, Costco, London Drugs, Staples Business Depot, and Le SuperClub Videotron, which owns Jumbo Video. Moreover, we are now beginning an outreach campaign to small video game retailers to encourage them to sign on to the code.

Turning our attention to the legislation before us today, RCC is pleased to offer its support for Bill 158. As noted earlier, retailers agree with the Ontario government on the policy issue of preventing the sale or rental of adult material to children. We feel that partnering with governments is the best and most effective way of reaching this goal. The proposed legislation is important because it would allow the Ontario Film Review Board to adopt video game classifications provided by the ESRB. This would harmonize Ontario's classification standards with other provinces and it would ensure that consumers are provided with consistent information.

With the passage last year of Bill 70, the film review board was given the authority to adopt the ESRB rating system, which it did in March 2005. With Bill 158, the board would be able to continue to have this rating system in place. This is important, as the ESRB rating system is an unbiased, standardized way to help a parent determine whether a game is appropriate for their child. It is the industry standard for North America, and RCC has made it a priority that increasing awareness of the ESRB rating system must be part of any plan to help parents make more informed decisions regarding their children's entertainment choices.

Bill 158 also reflects, we believe, the government's belief that when it comes to protecting children from access to video game material that is inappropriate for their age, the first and best line of defence is parental education. Indeed, this initiative is giving consumers and parents the tools they need to understand the ESRB rating system and make informed entertainment decisions for their family. RCC's partnership with the Ontario government demonstrates our mutual commitment to working together to bring about change that parents and consumers want.

RCC, the Ontario government and most everyone share a common goal: We want parents and consumers to have the information they need to select or recommend age-appropriate titles for children and youth, and we want the information we provide to be as clear and as objective as possible. Passing Bill 158 will help us to achieve this objective.

Thank you again for your time today. I hope that leaves some time for questions.

The Chair: We have just a couple of minutes, starting with the government side—actually, one minute, Mr. McMeekin.

Mr. McMeekin: I just want to pause for a second to thank the Entertainment Software Association of Canada and the Retail Council of Canada for their exceptional leadership in coming to the table and partnering with the government.

1100

Retailers are clearly onside, parents are clearly onside. In fact, listening to the presentation, 78% of the time, parents use the rating system as a guide. It's important to note that only 5% of the time do they disagree with it. That clearly is government on the right track in working with retailers who, in turn, are on the right track. It's a great partnership.

Mr. Martiniuk: Perhaps Mr. McMeekin, as the PA to the minister, can help me. Is it the intent of the gov-

ernment to have a regulation adopting the ESRB rating system, or does the government in these cases merely delegate the authority to make that decision to the classification board?

Mr. McMeekin: We're happy with the delegated authority at this point. It's working very well, as I think the presenters have indicated.

Mr. Martiniuk: But that means the board could alter that decision and choose not to adopt this system.

Mr. McMeekin: We're quite prepared to use that system. It's working very well. That's the government's position.

The Chair: Thank you, Ms. LaBossiere and Mr. DeRabbie, for your testimony.

JOHN PORTER

The Chair: I would now invite our next presenter, Mr. John Porter, if he is in the room. Mr. Porter comes to us in his capacity as a private individual. Sir, I remind you that you have approximately 10 minutes in which to offer your presentation. Please be seated. If there is any time remaining, it will be evenly distributed amongst the parties afterward for questions. If you might identify yourself, you have 10 minutes. Please begin.

Mr. John Porter: Thank you for allowing me to speak. My name is John Porter. I have been a filmmaker in Toronto for 37 years, but I have never worked in the film industry. I consider myself to be a fine artist, like a painter, but one who works in the medium of personal film. My films are personal because, like paintings, they are made by one person. I perform all the tasks: writing, acting, directing, photography, editing and financing. Financing is easy because, like paintings, my films cost about $50 each, so I'm able to make many each year, just like a painter. I've made 300 films, each one just a few minutes long, about as long as some people look at a painting. I show my films in art galleries and film festivals and I have received arts grants, including from the Ontario Arts Council.

Most fine artists produce work primarily as a form of expression, not to make a profit. We would like to earn a living from our art, but that is secondary. We produce to suit ourselves and then hope to find an audience. Most artists must earn a living and finance their work by taking regular jobs like driving a taxi, waiting tables, teaching or arts administration. I was a letter carrier for five years and a bicycle courier for 10 years and I get occasional work teaching and publishing, in addition to my artist's fees and grants.

My films cost so little to make because I make and show them on silent 8mm and Super 8 film, the old home movie formats before video. I don't like video and I choose to not use it, in the same way that an oil painter chooses to not use acrylic paint or watercolour, or a stone sculptor chooses to not use wood.

Last week, the Toronto Star published a full-page article about Super 8 film enduring as an art form, and I am quoted extensively in it. This is a photograph of me performing in one of my films in 1981. I have provided copies of this article for you.

One thing that makes Super 8 film inexpensive is that you can exhibit the same roll of film that was in the camera without making a copy, just like video. It's not a negative, as with larger film formats; it's a positive or reversal image, like 35-millimetre slides. It's the camera-stock film. It's the original, one-of-a-kind film, just like an original painting, and I prefer to exhibit my originals, just like a painter. They look better than any copy. So I don't make copies, partly to save money. I would rather spend money making new films than copies of old ones. Showing the original film also allows it to be exhibited just hours after shooting it, like an improvised performance.

So I handle my fragile, precious, original films with great care, usually preferring to travel with them and oversee the projecting, and never sending them away to strangers with strange projectors. I do not submit my films for classification to the Ontario Film Review Board, and none of my fellow film and video artists do, which means that all of our screenings are either illegal and underground, so we can't publicize them very much—and in fact we can't talk about them in some circles—or they are automatically classified as Restricted, regardless of the content of the work. Anyone under the age of 18 cannot attend. But my films are perfect for all ages, and I have done screenings for children. Children like my films and I like having children in my audience.

I have been protesting Ontario's film classification laws since 1979, when the review board began requiring the classification of personal film and video art such as mine. In 1983, I was devastated to see my 9-year-old nephew turned away from a solo screening and performance of my films at an art gallery in Peterborough, Ontario, where he lived, because my films had not been submitted for classification. He was disappointed and confused, wondering what was wrong with my films that he wasn't allowed to see them. He never got another chance to see his uncle's show, and now that he is living permanently in Dublin, Ireland, he may never get another chance. The Ontario government took that one special family occasion away from us forever, and I will never forgive them for that. Since then, I have been passionately consumed with fighting this law, as you can see.

It continues to break my heart, witnessing many other such incidents at public screenings over the years. Other film and video artists bring young family members to their own screenings, but are turned away even though the films are appropriate. This hurts even more when I see that my artist friends who work in other art disciplines, like painting, writing, music, dance and theatre, are not required to submit to forced prior classification of their work. It's discrimination. I have done nothing wrong. I have never been in trouble with the law. What have I done to deserve being treated by my own provincial government like a convicted pornographer on parole? I'm required to check with my local review board before I'm allowed to show my films to children. It's

degrading, and my only crime has been that I chose to work in film or video. Out of respect for myself, my family and my life's work, I can never accept this law.

I said that I have received grants from the Ontario Arts Council, but since the incident with my nephew in 1983, I stopped applying for Ontario grants. I felt that Ontario was rewarding its film and video artists with one hand and slapping us on the wrist with the other. It's paternalistic and I don't want your support under those conditions.

The Chair: Thank you, Mr. Porter. We have approximately two minutes. Mr. Kormos, if you might begin.

Mr. Kormos: Mr. Porter, your submission, after hearing from the Canadian Civil Liberties Association, adds to the increasingly compelling arguments to not support Bill 158. New Democrats opposed it on second reading. I am intrigued by the proposal by Judge Juriansz in his Glad Day decision—his contemplation of yet one step further from, let's say, Manitoba, to which he made frequent reference—and that was the category of unclassified, which then is caveat emptor. You'd better be satisfied that you have a reasonably good idea of what's in it before you take your seven-year-old kid. The onus is upon you. If film classification is truly to be about merely consumer advice rather than backdoor censorship, we have to have the classification of uncategorized, otherwise it becomes censorship by the requirement of classification.

1110

Section 7 will be ruled unconstitutional by the court. If you have any doubt about what the Court of Appeal will say, think about this. Judge Juriansz is now on the Court of Appeal, so that should give you some idea of where the Court of Appeal is going to be. But the next stage is to challenge the requirement that the film be submitted for classification. If it's truly consumer advisory, there wouldn't be a requirement because there would be the class of caveat emptor. There is nothing in this bill that says it's going to be against the law to sell a XXX movie, you know, Debbie Does Dallas—I'm dating myself—to a kid, never mind SpongeBob SquarePants or whatever the name of that particular character is.

Thank you very much for coming.

Mr. Porter: I'd like to add that I would like to see in the act, and not in the regulations, which can be changed more easily, a category for unclassified films. People can choose not to submit for classification, and that is a warning to parents or anyone going out to screenings of an unclassified film: beware. All we would lose by not getting a classification is extensive commercial distribution, which we're not that interested in and wouldn't get anyway.

The Chair: Thank you, Mr. Porter, for your testimony.

LIAISON OF INDEPENDENT FILMMAKERS OF TORONTO

The Chair: I would now invite our next presenter, Mr. Roberto Ariganello from the Liaison of Independent Filmmakers. Mr. Ariganello, you have 15 minutes in which to present. Any time left remaining at the end will be distributed evenly among the parties for questions. Please begin.

Mr. Roberto Ariganello: Thank you for allowing me to speak. I believe that Bill 158 and any previous legislation concerning film censorship and classification have been primarily concerned with the commercial film industry and, more specifically, with the sale and distribution of pornography. However, within Ontario there exists a large and vibrant not-for-profit media arts network of organizations that are community-based and entirely accessible by Ontarians. This community includes many film and video festivals, production co-ops, distribution centres and artist-run galleries. Many of these organizations are funded by the Ontario government through the Ontario Arts Council as well as the Canada Council for the Arts and local community arts councils. These not-for-profit organizations are represented nationally by art service organizations such as the Independent Media Arts Alliance, and provincially by Artist-Run Centres and Collectives of Ontario, ARCCO. All of these organizations are mandated by the arts councils, which fund them, to promote the creation and dissemination of media art work that is non-commercial in nature and demonstrates innovation and artistic merit in their particular art form. Unfortunately, this community network of media arts organizations, while directly affected by Bill 158, is largely unknown by the politicians who are responsible for Bill 158.

I would like to spend a few minutes describing the organization that I represent and the community within which it exists.

LIFT, the Liaison of Independent Filmmakers of Toronto, is a non-profit, charitable, artist-run centre dedicated to celebrating excellence in film and the moving image. LIFT exists to provide support and encouragement for independent filmmakers and artists working with film. When we say "film," we actually mean it. LIFT supports Super 8, 16mm and 35mm film production. We aspire to provide the industry standard in film production equipment to meet the needs of our membership.

LIFT was incorporated in 1981 as a non-profit corporation. The organization began with 25 members and an annual budget of $1,800. In the early period of LIFT, membership included now-noted filmmakers such as Bruce McDonald, Patricia Rozema, Atom Egoyan, Jeremy Podeswa, John Greyson and Michael Snow.

From its inception, LIFT had an open-door policy which allowed anyone, regardless of their level of expertise or financial situation, access to our facilities and resources. LIFT also provides free memberships to visiting artists from across the province and from across Canada, as well as a foreign visiting artist residency program that brings artists from abroad to Toronto to create new film art and exhibit their work.

Over the past 24 years in Toronto, literally thousands of people from groups who do not traditionally have

access to film resources have been able to pursue their independent artistic vision with LIFT's assistance. LIFT members produce films of all styles and genres, including narrative, experimental, animation and documentary. Our membership is a very diverse group that includes artists practising in a wide variety of media, who all share a passion for filmmaking and visual art. Moreover, LIFT members are often people who have surmounted formidable economic and social barriers in striving to complete their projects.

I mention the early period of LIFT's history because there are many small production centres throughout Ontario that are in the early stages of development. Sudbury, Thunder Bay, North Bay and Kingston are but a few of the communities in Ontario that are in the process of creating media arts production centres and addressing the needs of their respective communities. Many of these organizations will employ an artist-run model similar to that which exists at LIFT. It is vital that these fledgling organizations have the opportunity to grow, especially in small rural communities, since they will have a significant impact on cultural and artistic production in their particular regions.

LIFT does not produce the work of its membership, but rather provides a wide range of tools and support for independent filmmakers. We define independent filmmakers as those individuals who exercise creative control over their projects. This is a significant distinction. The term "independent filmmaker" is overused in the film industry. Very rarely does the industry definition of "independent filmmaker" involve exercising creative control over an individual's project. At media arts organizations throughout the province, aspiring filmmakers are allowed the opportunity to freely exercise their creativity in any way that they choose. As a result, Ontario actually produces a large number of successful film artists whose films are screened across the world. We heard from one just a moment ago.

LIFT currently has over 600 members, many of whom are employed in the commercial film industry yet belong to our community in order to exercise their creativity. Our accessing membership produces approximately 120 to 150 film projects per year that are screened internationally and frequently win awards. LIFT also produces Film Print magazine, a bimonthly publication that showcases the independent film community that falls under the radar of mainstream media.

LIFT's mandate has been made more significant by the recent decision by many media arts programs at technical schools and universities to divest their institutions of traditional filmmaking equipment in favour of primarily digital video services. Moreover, the rising costs of post-secondary tuition have also created a significant barrier to Ontario youth and aspiring artists in pursuit of their artistic goals through post-secondary institutions. As a result, LIFT provides over 90 workshops and six film courses a year that are extremely affordable and entirely accessible to the public. In 2005, LIFT anticipates that our educational services will reach over 1,000 participants. Media arts production centres across the province are providing vital educational services and training opportunities for Ontarians interested in the art of filmmaking.

Despite the fact that production and education are our primary concerns, LIFT exhibits a large number of films throughout the year. Our most popular event is the Salon des Refusés, where we screen short Canadian films rejected from the Toronto film festival. We recently launched a New Direction in Cinema series, which highlights achievements of our mid-career and established members. Each summer for the past 12 years, we have screened films at the Ward's Island clubhouse.

LIFT partners with a number of film festivals in Toronto each year to produce and exhibit new films. In the past year alone, we've worked with the Reel Asian Festival, the Images Festival, the Female Eye Festival, the Rendezvous with Madness Festival, AluCine Festival of Latin American Film, the Splice This! Super 8 Festival and the Moving Pictures Festival of Dance, as well as art exhibition organizations such as Harbourfront Centre, the Power Plant and YYZ Gallery. Many of these screenings take place at a variety of venues, including Innis Town Hall at the University of Toronto, Cinecycle, an alternative underground cinema, and Latvian Hall community centre. We are also currently involved in a tour of Ontario with a program entitled The $99 No Excuses Festival.

1120

Every time LIFT participates in a screening, we break the laws of Ontario because we do not submit our films for prior approval to the review board. We do not submit our films for prior review and classification for a number of reasons:

(1) Submitting films would be an administrative burden.

(2) We believe it's a waste of precious funds that would be better used for our programming.

(3) There is a possibility of damaging original films that have no preview copies available.

(4) The entire process is discriminatory, since other art disciplines are not required to submit their work for prior classification. Writers, painters, sculptors and all other artists are free from classification and censorship, yet artists who choose film are subject to government regulation.

The proposed Bill 158 is flawed. What is being proposed is a redrafting of the former legislation that was struck down in the courts. I believe there are three routes that the committee can take:

(1) You can recommend a series of regulations that would exempt media arts organizations such as LIFT from the law. However, you must also be prepared to exempt other groups such as churches, libraries and charitable organizations that wish to exhibit and distribute videos and films for fundraising purposes.

(2) You can employ the Manitoba model. However, this model is flawed. All arts organizations in Manitoba are obligated to submit their films and videos for classi-

fication. The Winnipeg Film Group, LIFT's counterpart in Manitoba, spends approximately $800 a year just for classification, a terrible waste of money better spent on programming. This model will also be struck down when challenged in the courts.

(3) You can simply let go of this legislation. The genesis of Bill 158 occurred almost 100 years ago, during the dawn of cinema, when film was a powerful propaganda tool. Times have changed. The current need for film classification is unnecessary. There are provisions under the Criminal Code that will punish anyone who breaks the law. The provincial government would do better to focus it's attention on the Internet, considering that the whole nature of commercial distribution will dramatically change over the next five to 10 years.

I'd like to thank you for this opportunity to voice my opinion and represent my community. I look forward to your recommendations concerning Bill 158.

The Chair: Thank you very much. We have about five minutes, to be divided evenly, starting with the government side. No questions? I'd move to the PC side.

Mr. Martiniuk: Thank you, Chair.

Again, I have a question for Mr. McMeekin, and I don't expect it to be answered today, either. I would like an answer, if possible, at the time we do clause-by-clause. As you are aware, at the present time film festivals and libraries and various other organizations are exempt from the classifications of the Theatres Act, pursuant to regulation 1031. My question to yourself and the minister is, is it the intent of the ministry to pass regulations exempting the organizations presently exempted in 1031 under the new act? As that's a complicated question, as I say, a think an answer at the time we do clause-by-clause would be fair.

Mr. McMeekin: We'll do our best to get you a complicated answer.

The Chair: Any further questions?

Mr. Kormos: I'm particularly intrigued by your comments, which, of course, were noted in the Juriansz judgment about the lack of, never mind prior approval, but even the implicit restraint by virtue of the requirement that you submit for classification not applying to other disciplines, and of course this conjures up recollections—and I just had occasion outside to note that law enforcement has been, if anything, zealous in terms of enforcing the Criminal Code, because the case law is more notable for the number of acquittals than the number of convictions. So they appear to have been very eager to attempt to apply the Criminal Code. If we go back to, I think it was the 1980s, in the United States, Mapplethorpe, who's the paint artist—

Interjection.

Mr. Kormos: Yes, Eli Langer, here in Toronto. I wonder if legislative research—as I recall, at the New Yorker Theatre on Yonge Street, not some off-the-way place, last year or the year before, there was the Toronto performance of Puppetry of the Penis, where two guys made puppets out of their penises on stage, apparently, for an hour. I don't know how long that performance lasted. I know how long I would have lasted—about three seconds—before I fled.

I wonder if legislative research could tell us whether or not Puppetry of the Penis, a live performance of two guys playing with their penises as if they were puppets, had to undergo any classification by the province, whether it had to display any warnings, or was the title of the performance enough to let people know that there were penises involved, so as not to endanger the health, welfare, sensibilities, well-being—this was right on Yonge Street. I remember the marquee. I wonder if legislative research would respond to that.

You are, of course, advocating a category of simply not submitted for classification?

Mr. Ariganello: Yes. I know that this Manitoba model is being held up by—

Mr. Kormos: As a beginning.

Mr. Ariganello: As a beginning. You have to understand that a lot of these not-for-profit media arts organizations are underfunded, and there are costs involved in actually submitting the film. It doesn't sound like a lot of money when you say $800, but it represents a significant amount for a small not-for-profit organization.

Mr. Kormos: As I understand it, a church group that wants to do a DVD of the choir performing for an hour and then sell that DVD as a fundraiser, based on what's eligible for exemption, would have to submit that DVD—because you can do that very easily now in-house with your Mac and your burner, but to do that as a fundraiser, the church choir, Dr. Qaadri, for fear that somebody should slip an obscenity into Ave Maria, would have to be submitted, and you've got to pay per-minute costs.

Mr. Ariganello: Yes.

Mr. Kormos: Good grief. I mean SpongeBob SquarePants, or whatever that guy is, has to be submitted at the $3 or $4 a minute, when we all—well, then again, I read about what those pastors in the United States had to say. Maybe he should be submitted; dangerous SpongeBob SquarePants—a subversive game.

The Chair: Thank you, Mr. Kormos, for your theatre insights. Thank you, Mr. Ariganello, for your presentation.

PLEASURE DOME

The Chair: I would now invite our next presenter, Ms. Linda Feesey, who is the president of Pleasure Dome. Ms. Feesey, please introduce yourself to the committee. I'd remind you that you have approximately 15 minutes in which to offer your deputation. If there's any time remaining, it will be distributed evenly among the parties. Please begin.

Ms. Linda Feesey: Good morning, members of the justice committee. I am Linda Feesey, president of the board of directors of the Artists Film Exhibition Group of Ontario, which presents film and video programming under the name Pleasure Dome.

Pleasure Dome is a non-profit, artist-run organization. We are one of over 100 film and video festivals and

exhibitors spread over the province who are dedicated to screening artists' film and video to the public. The films and videos we present are independent, non-commercial, local and international, contemporary, historical, experimental, innovative, short and feature length, all made by artists to be viewed in the context of larger historical trends within the production of art worldwide. We believe that our programming is being inadvertently subject to the legal implications of Bill 158. The Theatres Act is designed to govern the commercial film and video industry, not independent media arts.

Pleasure Dome consists of one paid program coordinator, 12 volunteer board members who are the programming collective, a computer, a Super 8 film projector, a DVD player and some cords. It is financially supported by three levels of government through the Ontario Arts Council, the Toronto Arts Council and the Canada Council for the Arts. Founded in 1989, Pleasure Dome is one of the oldest media arts exhibitors in Ontario. We program 20 events in a year-round screening series, and I want to stress that each event is unique.

1130

Pleasure Dome is an important contributor to the independent media arts in Ontario. We nurture the development of Ontario curators and their critical writing. The 12 members of the programming collective choose work and themes for each show. They write program notes and curatorial essays.

Pleasure Dome has published five books on media art and individual artists. Pleasure Dome nurtures the further development of Ontario artists. We pay to present their work to the public. Through commissioning grants, we pay for the creation of new works and their dissemination. We often bring artists to Toronto from within Canada and abroad to discuss their work, and we pay for their travel. We provide a forum for a dialogue with the international film and video community, so that our audience can evaluate contemporary, theoretical and aesthetic issues.

Pleasure Dome's principal audience is Toronto's ever-expanding film and video community. Also, the student body at a number of media arts programs, including OCAD, Ryerson University, University of Toronto, York University and Sheridan College, are all part of Pleasure Dome's target audience.

I think for now I'm just going to continue with my section on Bill 158 and play the video at the end. It's a sample of the kind of work we're showing to the public. But I don't want to risk going over.

The intent of Bill 158 and the current Theatres Act is to govern the exhibition and distribution of commercial film and video, and its measures are not appropriate for independent media art. The film and video artwork created and exhibited by our community is non-commercial and intended for cultural purposes. We request that our sector be written out of the Ontario Theatres Act. This would be a better solution than the current regime of exemptions in the regulations and more in keeping with last year's judgment, Regina v. Glad Day.

Pleasure Dome—this is our policy—does not submit its film and video programming for prior approval by any censoring bodies. Bill 158 effectively renders our screenings illegal. We do not submit works for classification because it is a form of prior restraint that infringes on our charter right to freedom of expression. We are ideologically opposed to censorship in any form.

There are also practical considerations. As stated in the Ontario Superior Court judgment, prior approval is a financially and administratively burdensome practice. This is especially so for our type of administratively thin organization, not to mention discriminatory, as other art disciplines are not required to submit their work for prior classification. It is an unnecessary and costly administrative burden to Pleasure Dome, because we exhibit works only once and usually show many short films at an event. Often the work of a touring international artist is brought directly to the screening, so there's no window of time for prior approval.

The regulations attached to the previous Theatres Act provided exemptions to art galleries, libraries, educational institutions and festivals if they posted a sign restricting admission to those 18 years or older. We object to any kind of age restriction on our audience. Much of the work is appropriate for educating all ages in the arts, yet the law prohibits access to younger audiences for the sectors exempted in the regulations. Programmers and curators are well-educated, responsible citizens who are capable of self-regulating and are in the best position to make decisions about access to the work. An interest in art is a process of intellectual development that starts in childhood or adolescence. No one who chooses to be an artist or art historian sees their first painting at age 18. Also, books, paintings and other cultural products are not subject to prior approval.

This sector to which Pleasure Dome belongs, specifically exhibitors and distributors of non-commercial artists' film and video, should be written out of the film classification section of Bill 158 altogether, or perhaps placed in an unclassified category. We want this contained in Bill 158 rather than in its regulations, to ensure a secure environment for the dissemination of non-commercial, artist-made film and video in Ontario.

Now I'd like to show you an example of our work, of something that we've shown. It's a commissioned piece by artist Judith Doyle. She's also a teacher at OCAD. Unfortunately, I couldn't bring the one that I did cite, because it's in the PAL format, which is European. You're going to see something on the history of the moving image and also some great footage shot in our own Beaches neighbourhood.

The Chair: How long is this video?

Ms. Feesey: I'm not sure. You can cut it off if we're going over.

Video presentation.

1140

Ms. Feesey: That's the end.

The Chair: We've got one minute remaining, and we'll start with the government side. No questions? Mr. Martiniuk?

Mr. Martiniuk: No questions.

The Chair: Mr. Kormos, one minute please.

Mr. Kormos: Don't go away, please. I'm curious as to why you place exemptions first and then you sort of say, "Maybe an unclassified provision."

Ms. Feesey: That would be our second choice.

Mr. Kormos: Why wouldn't you go full blast into proposing a category of films that have not been submitted for classification? Would you rather have an exemption, or would you rather have this broader category of film not submitted for classification—without any presumption of it being adult material? The first submitter today was the fellow who was involved, presumably, in the distribution of adult movies—because again, the church choir singing could be a film not submitted for classification, as readily as something one of your colleagues produced.

The Chair: You have just about a minute, Ms. Feesey, please.

Ms. Feesey: I think what we'd like to see is somehow to have the law written so that it just does not address our sector at all, because we're non-commercial. If it can be written just to cover things that are within the industry, within commercial venues, that would be the first choice. Is that possible?

Mr. Kormos: Anything's possible. It's a matter of political will. I get you, but I don't know.

Ms. Feesey: But our second choice is the unclassified category for our type of non-commercial artist, educational film and video.

The Chair: Thank you, Ms. Feesey, for your deputation, as well as the film.

IMAGES FESTIVAL

The Chair: I would now invite our next presenter, Ms. Petra Chevrier, of Images Festival. Ms. Chevrier, I remind you that you have approximately 15 minutes in which to offer your presentation. Any time remaining will be distributed evenly among the parties afterward. If you might identify yourself for the purposes of recording for Hansard, you may please begin.

Ms. Petra Chevrier: Good morning, members of the committee. Thank you for giving me the opportunity to speak on behalf of our organization with respect to Bill 158 and the previous legislation it amends, the Ontario Theatres Act. I join these two together because it seems clear that the regulations which affected us through the Ontario Theatres Act will likely be sustained into the new regulations.

Again, my name is Petra Chevrier, and I'm currently employed as the executive director of the Images Festival of Independent Film and Video, known familiarly as Images Festival.

Images Festival is presented annually in April by a not-for-profit charitable organization devoted to the exhibition, public education and promotion of film, video and related artwork.

In the past, I've also been involved as a board member with several other not-for-profit and/or artist-run organizations that exhibit film and video art, such as Pleasure Dome—we just heard from Linda Feesey, president of Pleasure Dome—and YYZ Artists' Outlet, a Toronto multidisciplinary art gallery that exhibits time-based media art as a regular component of its programming. I have also in the past made and exhibited films of my own, and continue to do so occasionally. My presentation this morning is from my vantage point as the executive director of a film and video festival but, of course, this perspective is informed by many years of work in this discipline within different capacities.

Images Festival began 18 years ago as a festival of independently produced film and video, and has grown to be one of the largest events of its kind in Canada. It's located here in Toronto, and we just wrapped the festival last weekend, actually. I'm going to reiterate the definition of "independent." By independent, we mean works whose copyright is retained by the artist-creator and wherein the artist-creator retains complete creative control over the final work, including the manner in which it is disseminated and exhibited.

This distinction is important in identifying the genre of work we exhibit, as this type of creative control and exclusive ownership of copyright seldom exists within the commercial film and television industry. Thus one could say that we exhibit works that are of a non-commercial nature, although that's somewhat difficult to define. Images Festival is not considered generally to be a film industry event, but rather an event that focuses on contemporary film and video art. To be very specific, Images Festival is an exhibitor of works of art that are based on and/or derived from—here I'm actually going to quote section 1 of the proposed act—"a moving image, including an interactive moving image ... that may be generated for viewing from any thing including, but not limited to, videotapes, video discs, film or electronic files ('film')". So film, in the sense of the act, encompasses a very wide range of media.

As a presenter of contemporary art based on the moving image, I find this definition very inclusive of the full breadth of the medium as we understand it. Images Festival staff and the artists we present to the public very often stay up late into the night thinking of new ways to present and exhibit media artworks in novel formats and contexts. In this way, the definitions and boundaries of the medium traditionally known as film are constantly being challenged, tested and explored by artists in every way imaginable. Inevitably, the work we present crosses over into the domain of the visual arts, such as within the art gallery or museum setting, into cyberspace with online and virtual projects, into the street and other venues with public projections, live performances and so on.

Now I get to my key point: When we consider the effect this proposed legislation will have on the film and video arts sector, it is hard to conceive of a more futile, censorial and discriminatory process than the one being reinstated by the proposed act. It is clear that the new

legislation retains prior approval of all film art or time-based art generally as a central goal. My position is that government regulations that seek to control, via a censorship scheme based on the prior approval of exhibited works, the creative output of artists working with the moving image are an unreasonable suppression of the right of freedom of expression.

I'll briefly outline my arguments around these three points.

(1) Futile: Currently, the largest-growing area of exhibition and distribution for film, as defined in the act, is via electronic computer files distributed from Internet servers. Images Festival has for many years been involved in the curating and presentation of on-line Web-based projects as part of our activity, so we are very aware of the range and potential growth in this area. It's clear to everyone involved that the entire field is growing at an incredible rate, largely through unregulated and unregulatable on-line distribution environments. Ontario viewers of almost any age can readily view works streaming from sites all over the world.

1150

Another very important growing area for film and video artists is art-gallery-based exhibition, often referred to as "installation." Installation art increasingly features elements of recorded moving images as part of the work. My reading of the proposed act suggests that the revised legislation intends to include this range of film-based art within its scope. Is this really an enforceable and desirable outcome? Can a rating system designed to regulate the fairly narrow range of commercial film distributed through theatres and in video stores be realistically applied across the full spectrum of time-based media arts exhibition, and even to include on-line dissemination of film art? This is truly an ambitious project, and one that becomes more ambitious with every quantum increase in Internet bandwidth and server storage capacity, wherein self-distribution and localized micro-distribution become commonplace. With the proliferation of artist access to digital technologies in many other environments, the scope of this regulatory project will likewise increase.

(2) Censorial: The focus of the proposed revised legislation on specifically censoring film art using a process of prior approval is clearly documented within the act's own explanatory note. This has been discussed by several other presenters this morning, so I won't dwell on this.

However, this brings me to the issue of exemptions, the ubiquitous and apparently more-or-less functional exemptions from the act, such as the key exemptions that allow art galleries and film festivals to continue to operate without apparent—key word "apparent"—or excessive interference from the Ontario Film Review Board. I would like to spend some of my remaining time looking more closely at the negative effects of these exemptions on audience development, on art education and specifically at the important area of art education for youth under 18 years of age. This is a project that we're involved with on a regular basis.

As many of you will know, under the previous regulations and as a predictable component of the new regulations, film festivals and art galleries were granted exemptions from the prior approval provisions of the Ontario Theatres Act in exchange for announcing that the exhibited artworks are restricted to those aged 18 or over. On the surface, this blanket R rating of all exhibited works seems like a reasonable compromise. The film festival avoids the burdensome submission process, particularly for works arriving just before the scheduled screening, and most of the film festival audience, including the Images Festival audience, is over 18 anyway, so why worry? When was the last time anyone remembers actually seeing a Restricted sign outside an art gallery video art installation? My perception is that the previous act was only selectively enforced within the media art exhibition world. So many organizations have been quite happily continuing to work under these so-called exemptions schemes.

Looking at this in detail now, what kind of message is this requisite R rating sending to our potential future audiences? Our film festival brochures and program guides contain the steady message, "Screenings restricted to persons aged 18 or over." Is this informing our audience that the content of our film festival is excessively violent and degrading, contains sexually explicit scenes or even just contains images of genitalia and is therefore not suitable for anyone under 18? No, not at all. We are simply satisfying a regulatory imperative. The reality is quite the opposite. Most of the films we exhibit contain nothing that would invoke a Restricted rating or even anything close to a Restricted rating.

Take Barbara Hammer's Resisting Paradise as a case in point, which Images Festival premiered in 2004. That's the previous catalogue. This experimental feature-length documentary examines the life of French painter Henri Matisse during World War II and contrasts it with the world of the resistance movement taking place in the south of France, combining this with a stirring account of the attempted escape of Jewish writer Walter Benjamin across the Pyrenees, an escape attempt that ended tragically in his suicide. This amazing and thoughtful film, completely suitable for an adolescent audience, particularly one with an interest in art history, was forcibly screened with an R rating.

Of course, there are the odd exceptions. What about the small number of films at the Images Festival that should be reserved for adult audiences or where adult accompaniment is considered to be necessary? I think that the responsibility for declaring a screening restricted or for explaining the content to a potential guardian bringing a teen or a child to a screening should fall to the curators and programmers who always attend our festival screenings on behalf of the festival.

Festivals have a vested interest in taking responsibility for these important issues around age suitability, but the enforced blanket Restricted rating takes away our ability to exercise this responsibility with regard to younger audience members, and hence takes away our freedom of

expression as an exhibitor. If the film festivals were given the freedom to self-regulate, I'm entirely convinced that we would do so in the most conscientious and responsible manner and from the most informed positions as educators and programmers.

How much time do I have left?

The Chair: You have about five minutes.

Ms. Chevrier: Five minutes. OK, good.

And when we do embark on youth education—and we're doing a project this year which is actually documented in the catalogue—and art education aimed at high school students, in these cases we are required to submit the works for approval to obtain a rating prior to the screening. When we do this, it turns that out no one at the Ontario Film Review Board seems to be very worried about previewing the works anyway. So we write out the description on a form, send the form in to the Ontario Film Review Board, and they send back the rating, sight unseen: PG. We could have known that, since we selected it ourselves with a teen viewer in mind. Plus, we actually looked at the work.

All this bureaucracy, all these regulations, and in the end we decide what we will show and to what age group, with a rubber stamp applied by the Ontario Film Review Board. It really doesn't make that much sense to us. But this seemingly microscopic permissiveness hides the overall censorial legacy of the act.

I'll conclude this section of my discussion of age censorship, and that's what I call this: a form of age censorship. The current regulatory situation creates an environment where children are exposed, via commercial film distribution and television, and from a very early age, to nearly every form of commercial film production, albeit with some restrictions and a steady stream of content warnings supplied by the OFRB. On the other hand, the age censorship inherent in the existing and proposed legislation, together with the chill effect that the prior approval requirements generate within the art world, combined with the general absence of independently produced programming in mass media markets, has created the truly strange effect of actively preventing access to works created by independent film and video artists for anyone under age 18. Linda mentioned that you cannot start to begin your appreciation of art at the age of 18.

What effect is this having on the future of our society, a society where youth have nearly zero access to the many important media works created by independent artists and nearly unlimited access to commercially driven productions?

(3) Discriminatory: As a final point, only artists working in the time-based arts are required to submit their work for prior approval. This point has already been made, so I'll skip ahead a bit.

For film and video artists it has become commonplace to refuse to allow their own works to be submitted to the OFRB. They simply philosophically are opposed to it and they simply tell us that they will not allow us to submit their work. We have to follow along with that. Therefore, we're in a position where we cannot even present it to teens, because it prevents us from doing that. They see it as unconstitutional and they see it as an unreasonable restriction on their freedom of expression. This phenomenon is at the core of the chill effect that I mentioned above, and this effect has become endemic now within the film and video arts sector.

Isn't it time that Ontario ended the era of enforced prior approval of all film, video and other art based on the moving image?

Thank you very much for your time and attention.

The Chair: Thank you, Ms. Chevrier, for your presentation. Regrettably, we won't have any time left for questions.

RAJ PANNU

The Chair: I now invite our next presenter, Raj Pannu, who has also submitted some written materials which have been distributed. Mr. Pannu, if you might come forward—oh, it's Ms. Pannu.

Ms. Raj Pannu: I know I have a unisex name, but it's Ms. Raj Pannu.

The Chair: Ms. Pannu, you have 10 minutes in which to present. Any time remaining will be distributed for questions amongst the parties. Please begin.

Ms. Pannu: Good morning, committee members, ladies and gentlemen. My name is Ms. Raj Pannu. I'm appearing before you to speak in support of Bill 158, titled Film Classification Act. With your permission, I will read a brief prepared statement, after which, time permitting, I'll be happy to answer any of your questions.

I immigrated to Canada in 1981, after practising as a lawyer in the Bombay High Court in India. For 16 years I was educated by the Irish nuns of the Convent of Jesus and Mary in northern India. Prior to being called to the bar in India, I worked as a lecturer of English and was a secondary school vice-principal.

1200

Once in Canada, over a period of 10 years I worked in various official positions as a legal expert with the departments of Quebec immigration and Canada immigration in Montreal. During this period, I worked with the Security Intelligence Review Committee in Ottawa, the Royal Canadian Mounted Police, the Federal Bureau of Investigation, Quebec provincial police, the Superior Court of Justice in Montreal, the Immigration and Refugee Board, the immigration appeals division and the Supreme Court of Canada. I was promoted as a case presenting officer and transferred to the Greater Toronto Enforcement Centre in 1991.

Presently, I am a practising barrister and solicitor in Mississauga, as well as a qualified teacher and principal with the Ontario College of Teachers. I am proficient in six languages. The Ontario Lieutenant Governor in Council appointed me as a member of the Ontario Film Review Board in December 2002. I served in that position until December 2004. Today I am an ex-board member. I have no affiliation with any political party. I stand

before you as a well-informed and experienced member of Canadian society.

During my five days of initial orientation at the Ontario Film Review Board, every evening I returned home with severe migraine headaches and a heavy heart. I did a lot of introspection as to what the ramifications of my watching such sexually explicit and gruesome material might be, material which was exhibited under the label of "entertainment." I was shocked beyond words. I hailed from a country which was still passing through a period of Victorian moral prudery. My whole life as I knew it was shaken up. Was this some form of poetic justice? Whatever it was, it flew in the face of my protected upbringing and traditional values. I was tempted to walk away from this nightmare. It was a protracted, harrowing experience for me to watch adult films. I could not envisage myself working day after day, viewing adult sex films which were so violent, explicit, degrading and dehumanizing.

But I accepted it as a challenge. I understood the important role I was assigned when I became part of the film classification and approval system. I decided to adopt an objective and clinical approach in order to fulfil the stressful demands of my position as a panel member of the OFRB.

My experience with the OFRB has been a real eye-opener for me. The OFRB does not interfere with the viewers' selection of what they watch. It renders only objective and consistent classification decisions which reflect the community standards of the province of Ontario. It fulfils the basic objective, which is to classify films and videos and, thereby, provide the public with sufficient information to make informed choices for themselves and their families.

The board's work is not censorship. It does not interfere with the viewing rights of the public. The public is free to view any age-appropriate classified film or video. The OFRB provides the viewing public with more consumer education and awareness initiatives which better meet the needs of the parents—example: video games. I cannot emphasize enough that OFRB members are not censors; they are classifiers. They do not remove or suppress what is considered to be morally, politically or otherwise objectionable viewing material.

The proposed act requires persons distributing or exhibiting a film to be licensed. It also establishes a licensing process, one that affords an applicant the right to request a hearing before the Licence Appeal Tribunal.

Bill 158 provides for the designation of inspectors who have general powers to inspect business premises, to seize material which contravenes the act and also to apply for warrants to seize material from distributors or store owners who are reluctant to surrender the contravening materials.

The powers of investigators have been well defined under Bill 158. This act clearly establishes the provisions that pertain to offences and penalties.

This bill separates authorities per the rulings of our courts. It separates the authority to classify films from the authority that approves films. The criteria used in approving films, adult sex products and video games which appear to be criminally obscene will be set out in the regulations. Those that do not meet the essential criteria will then be refused approval. Of course, there is always the right of appeal.

Canada's freedoms are spelled out for us in our Charter of Rights and Freedoms, which can be found in the Constitution Act, 1982. Prime Minister Pierre Trudeau once asserted, "The state has no business in the bedrooms of the nation." His statement was aimed at protecting the privacy of all Canadians, but, on the other hand, Mr. Trudeau knew that the state has a responsible role to play in the public life of its citizens. It was Émile Rousseau, another French philosopher, who said, "Man is born free, but everywhere he is in chains."

Section 1 of our Charter of Rights is a constant reminder that our freedoms are limited by the duties and responsibilities imposed upon us by a free and democratic society.

The Chair: Another reminder, Ms. Pannu: You have two minutes.

1210

Ms. Pannu: If the only way we can protect our children is by placing chains upon the depiction of sexually explicit and violent movies, DVDs and video games that fit the criteria for criminal obscenity, then Bill 158 has an important role to play.

Bill 158 is based upon objective classification guidelines to educate parents. As an educator, I was appalled to see that a grade 6 class at a senior public school was viewing a Mike Myers 14A movie that was loaded with sexual innuendo and coarse language. Although the film had been classified, no one had bothered to check the appropriateness of the film for grade 6 students. Some mainstream films, videos and DVDs receive public screenings without first having been classified by the OFRB in Ontario. They are advertised as NR or STC, which stand for "not rated" or "still to be classified," in the newspapers along with show timings. This is now a violation under sections 10 and 11 of the proposed Film Classification Act, 2005.

Many foreign-language films are presently being shown in our communities without any OFRB classification. DVDs, videos and video games are being rented or sold in grocery stores in Ontario without any classification whatsoever by the OFRB. Adult DVDs and videos are displayed in the backrooms of video stores without any classification. Product which would never be approved is being held under the counter and freely circulated in ethnic community stores in many neighbourhoods across Ontario.

The Chair: If you might bring your remarks to a conclusion, Ms. Pannu.

Ms. Pannu: We cannot undermine the importance of classification and the legislation under Bill 158. The Ontario Superior Court of Justice's decision, dated April 30, 2004, in R. v. Glad Day Bookshops Inc., played a

pivotal role in the amendment of the Theatres Act that was redundant and did not meet society's needs.

Since I have overstayed my time here, I would like to conclude by saying that this act is not perfect. Nothing is perfect. I have mentioned the pitfalls and shortcomings of this act in my written presentation. Thank you very much for hearing me out.

The Chair: Thank you very much, Ms. Pannu. Regrettably, there will be no time left for questions.

If there is any other further business on behalf of the committee—yes, Mr. Martiniuk?

Mr. Martiniuk: If I may, I have a short motion requiring information. I'll read it. I just made it up as I went along.

I move that this committee request that legislative counsel prepare an amendment providing that rear window captioning be a category of classification required to show movies in Ontario theatres; and secondly—and this was made at the request of my colleague Mr. Kormos, and I agreed with it, by the way—that this bill be referred to Commissioner Keith Norton for his comments regarding accessibility to the hearing-impaired, said comments to be received by April 26, 2005, which is the day before our clause-by-clause.

I think that is self-explanatory.

The Chair: Any comments and debate on that particular motion? Is it on that particular motion, Mr. Kormos?

Mr. Kormos: Yes. Thank you kindly. I support the motion. I think some of the presentations today raised some very serious matters around the bill's failure to address accessibility in the context of a Bill 118 that doesn't address it. This is an appropriate time to deal with that. I think the committee would be remiss if it did not support the motion requesting legislative counsel to provide a draft amendment addressing the issue of identifying a film as being accessible and/or requiring people producing film and displaying it to make it accessible; similarly, in view of the comments made by Mr. Malkowski, among others, that a prompt referral to Norton for his comments would be astute, responsible and appropriate.

The Chair: Any further comments or debate?

Mr. McMeekin: I made some copious notes while the members of the deafened community were speaking here. That's certainly something we're prepared to take under advisement.

I would point out, Mr. Chairman, with all due respect, that there is currently a case before the Human Rights Tribunal on this issue. It therefore would be I think inappropriate for us to prejudge that adjudication process by declaring in advance the resolution that is implied in the motion that's presented. So we ought to listen carefully. I think we've done that today. I think we ought to make notes. We ought to consult with our legal counsel with respect to it. There might be a reference in clause-by-clause at some point, but I think there's a basic argument that it falls outside the scope of this particular bill. In addition to that, it is currently before the Human Rights Tribunal. So the motion is almost, by definition, inappropriate.

The Chair: Be that as it may, are there any further comments and debate on the motion?

Mr. Martiniuk: I'd ask for a recorded vote.

Ayes

Kormos, Martiniuk.

Nays

Brown, Brownell, Delaney, McMeekin, Racco.

The Chair: The motion is defeated. There being no further business of the committee, I declare this committee adjourned.

The committee adjourned at 1215.

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Président
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr. Michael A. Brown (Algoma–Manitoulin L)
Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)
Mr. Kevin Daniel Flynn (Oakville L)
Mr. Frank Klees (Oak Ridges PC)
Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)
Mr. Mario G. Racco (Thornhill L)
Mrs. Elizabeth Witmer (Kitchener–Waterloo PC)

Substitutions / Membres remplaçants
Mr. Gerry Martiniuk (Cambridge PC)
Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot L)

Clerk / Greffier
Mr. Katch Koch

Staff / Personnel
Ms. Margaret Drent, research officer,
Research and Information Services

CONTENTS

Wednesday 20 April 2005

JP-26

ISSN 1710-9442

Legislative Assembly of Ontario

First Session, 38th Parliament

Assemblée législative de l'Ontario

Première session, 38e législature

Official Report of Debates (Hansard)

Wednesday 27 April 2005

Journal des débats (Hansard)

Mercredi 27 avril 2005

Standing committee on justice policy

Film Classification Act, 2005

Comité permanent de la justice

Loi de 2005 sur le classement des films

Chair: Shafiq Qaadri
Clerk: Katch Koch

Président : Shafiq Qaadri
Greffier : Katch Koch

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Wednesday 27 April 2005

Mercredi 27 avril 2005

The committee met at 1000 in room 228.

FILM CLASSIFICATION ACT, 2005
LOI DE 2005 SUR LE CLASSEMENT DES FILMS

Consideration of Bill 158, An Act to replace the Theatres Act and to amend other Acts in respect of film / Projet de loi 158, Loi remplaçant la Loi sur les cinémas et modifiant d'autres lois en ce qui concerne les films.

The Chair (Mr. Shafiq Qaadri): Good morning. I call this meeting of the standing committee on justice policy to order.

We're going to begin clause-by-clause consideration of Bill 158, An Act to replace the Theatres Act and to amend other Acts in respect of film.

I'd advise members of the committee that copies of amendments were received by the clerk yesterday at 4 p.m. I believe there are two only, and they have been distributed. We'll actually begin consideration of those.

I'd now like to welcome as well Mr. Wood, legislative counsel, who will help the committee in its deliberations with clause-by-clause consideration of the bill.

Mr. Kormos?

Mr. Peter Kormos (Niagara Centre): I'm grateful once again to Margaret Drent, research officer, who put together yet more packages of material in response to a request from the committee. I appreciate her and others of her staff doing that in such short order.

The Chair: I'll open the floor to members. Are there any comments, questions or amendments to any section of the bill?

Mr. Gerry Martiniuk (Cambridge): Chair, you'll recall that, prior to rising at the end of last Wednesday's sitting, I asked a question of Mr. McMeekin regarding the present outstanding regulation 1031 under the Theatres Act. That particular regulation exempts certain festivals, including our movie festivals, from the operation of the act and the need to obtain classification. The question was to Mr. McMeekin as to whether or not a regulation similar to that will be passed under the new act.

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): The simple answer is yes. The elongated answer would also include a reference to the ability of anybody who wants to have the film shown to children to have that classified voluntarily. There would be no cost associated with that. As I understand it, it's normally just a narrative process. You send a narrative of what's in the film, unless there was some reason to screen it. So the existing protocol would continue, with that additional flexibility for those who were appealing for it the other day.

The Chair: Are there any comments, questions or amendments to any section of the bill, and if so, to which section?

Mr. Martiniuk: You're not going to do it clause-by-clause?

The Chair: Yes, we are. We have 53 sections. With your permission, if I have unanimous consent—if we can do a kind of block-by-block consideration.

Mr. Kormos: You're going to commence with section 1?

The Chair: Yes.

Mr. Kormos: OK. I suggest that you can do 1 through 4.

The Chair: Fine. Sections 1 to 4. I was also thinking of 1 to 13.

Mr. Kormos: No.

The Chair: As you wish: 1 to 4. Do I have consent to consider sections 1 to 4 as a block? Yes.

Shall sections 1 to 4 carry? Carried.

Section 5?

Mr. Kormos: Once again, my more specific comments are to section 6, but section 5 illustrates some of the problems with this act as we debate it here in committee or on third reading. Again, I'm concerned about the incredible delegation of authority to the Lieutenant Governor in Council. Section 5 is the beginning of that. It seems to me that, if we're talking about bringing film classification into the 21st century, this committee should be debating the very sorts of things and hearing from the public about the very sorts of things that section 5 contemplates for regulations.

The Chair: Any comments? There being none, shall section 5 carry? Carried.

Section 6.

Mr. Kormos: Once again, significant delegation to the Lieutenant Governor in Council: it's at this point, because it would seem to me that it would be under the regulations made pursuant to section 6 that this would occur. New Democrats have been increasingly persuaded of the appropriateness of an unreviewed or an unclassified category. We heard that submission made by

some of the public presenters. That would address the issue of film festivals, any number of small filmmakers, small distribution films and low-budget films. Basically the unclassified would be a caveat emptor: This film has not been reviewed by the film review board; it may or may not offend the Criminal Code; that will be dealt with by the police, but buyer beware. Don't take your kid to go and see it or don't go see it yourself if you're squeamish about particular things unless you're satisfied by whatever means you want to make available to you that you're not going to be offended by the film.

I simply want to put on the record at this point that New Democrats are hopeful, and indeed call upon the government to ensure, that there's an unclassified or unreviewed category available when regulations are made pursuant to section 6.

1010

The Chair: Any further comments?

Mr. McMeekin: We've made note of the presentation, the nature and obviously the will of comments made by members of committee.

The Chair: Any further comments or questions?

Shall section 6 carry? Carried.

Section 7: Mr. Kormos.

Mr. Kormos: Section 7 is an incredibly offensive section because what it does is retain prior approval, the very thing the court said that the government could not do, that it didn't have the constitutional authority to do. This very specifically talks about the power to approve, implying that non-approval means that the film can't be shown. This is separate and apart from classification or categorization or labelling or identifying content. So I want to indicate very emphatically that New Democrats are opposed to section 7. We will be voting against it, and it should be struck from the bill—an admonition to the government that maintaining section 7 will simply result in yet more litigation and, in all likelihood successful litigation.

Mr. McMeekin: I'm sure Mr. Kormos won't be surprised to hear that we're in fundamental disagreement around the issue of classification. As we look at this bill before us, there's a very real effort to respond positively to the recent ruling of the judge and to really restrict that area where I think there's clear consensus that this kind of mechanism needs to be in place. We'll just have to agree to disagree on that. If there's legal action down the road, we're confident that the government's position, particularly given the sensitive regulations that will be developed and put in place, will withstand whatever legal test is there.

Mr. Kormos: Yes, but the government was confident it was going to prevail in the Glad Day books case, spent a fortune on legal fees and lost miserably. Fair enough.

Mr. McMeekin: We didn't appeal that because we were so confident that when we reworked the bill, as per the guidance of the court with the regulations, we would do such an exceptionally good job at it that it wouldn't be a problem.

Mr. Kormos: You see, that's the sort of comment that's going to have costs assessed against the government for showing not just modest respect for the court but actual indifference and arrogance. It's very regrettable. That comment is liable to cost the taxpayer huge amounts of money when the court assesses costs in the next round of litigation.

Mr. McMeekin: Let me be clear: There's no arrogance or indifference to the court. We're very sensitive to what the court has suggested, and the bill is a very good attempt to reflect that.

The Chair: Any further comments on section 7?

Mr. Kormos: Recorded vote, please.

Ayes

Brown, Brownell, Delaney, Martiniuk, McMeekin, Racco.

Nays

Kormos.

The Chair: Section 7 carries.

Section 8?

Mr. Kormos: Chair, if I may suggest, insofar as we're concerned, you can proceed right up to section 13.

The Chair: Do I have consent for block consideration of sections 8 to 13? Fair enough.

Mr. Martiniuk: Sections 8 to 12, and then we'll deal with 13.

The Chair: Sections 8 to 13, and then we'll get to you.

Shall sections 8 to 13 carry?

Mr. Bob Delaney (Mississauga West): Sections 8 to 12.

The Chair: To section 13.

Mr. Kormos: He's not amending section 13.

Mr. Martiniuk: I'm adding to it, I guess.

The Chair: Shall sections 8 to 13 carry? Carried.

Now we have an addition, not an amendment. Section 13.1: Mr. Martiniuk?

Mr. Martiniuk: If I read slowly, it's because I forgot my reading glasses this morning.

I move that the bill be amended by adding the following section:

"Rear window captioning

"13.1 No person shall exhibit a film unless the person provides rear window captioning for the film upon request, except if an exemption under the regulation applies."

The Chair: Any comments?

Mr. McMeekin: I was thinking hard on this last night, and sketched out a response that I think is appropriate. It's our position that the issue of rear-window captioning is clearly not within the scope of Bill 158. Matters of accommodation are covered under the Ontario Human Rights Code, which is, in fact, why the situation has been deferred to the Human Rights Commission. As I under-

stand it, there's currently a complaint to the human rights tribunal to consider under that very legislation.

The ministry did receive a complaint regarding the Theatres Act and the rear-window captioning, and I'm pleased to say that the commission considered this matter and decided not to refer the matter to the human rights tribunal. In so deciding, they stated, "The purpose of the Theatres Act is not to address the issue of providing captioning in films."

So as the matter is currently before the tribunal, and the human rights folk have said it isn't something that falls within the purview of this act, we think it would be inappropriate and certainly premature to support the amendment.

Mr. Martiniuk: We've heard from a number of individuals regarding the lack of accessibility. They unfortunately cannot attend movies because their hearing is impaired. They came to the committee with this problem. They are not being treated the same as the rest of the population. There is a lack of accessibility to public movie viewings. There are some difficulties, I'm sure, in a section of this kind, but I think all members of the committee surely recognize that we as a society must provide accessibility for those with an affliction. I think it's incumbent on us to hear from them without throwing technical arguments in the way, and look at it as a matter of pure justice in our society.

Mr. Kormos: New Democrats enthusiastically support this amendment to the bill. Equality rights are absolute. You can't pick and choose. You can't create a scenario where some people are more equal than others, or you have equality some of the time or equality when it's convenient. I'm not suggesting for a minute that there isn't going to be some inconvenience, and perhaps some cost—we understand that—to require rear-window captioning, but for films that are exempted. Mr. Martiniuk in his motion, I think, has been very generous in permitting that exemption. The pick-and-choose approach to equality is a very dangerous road to travel. Here you have a legislative committee that has an opportunity to create access or provide access for, in this instance, deaf people, people who are hearing impaired. I regret that it appears we won't be seizing that opportunity.

New Democrats enthusiastically support this amendment to the bill. I'll be calling for a recorded vote, please.

Mr. McMeekin: It's ironic that the Human Rights Commission, which is in place, in fact, to ensure the pure justice applications of the law, is the very agency that's suggesting that this falls outside the scope of the bill.

1020

That said, I think every member of this committee was pleased that, notwithstanding the unsuitability of dealing with this particular cause in this particular context, I found the sharing of the hearing-impaired community valuable and helpful. I certainly don't deny that they have what appears to be a legitimate concern, and that is in an adjudication process at this moment. Thank goodness we live in a country where we do put provisions in place, where we can get a balanced, detailed, legal hearing on this issue of rights under the Charter of Rights and Freedoms. We're going through the process now.

The Chair: Are there any further comments or questions?

Mr. Kormos: Recorded vote, please.

The Chair: We have a request for a recorded vote.

Ayes

Kormos, Martiniuk.

Nays

Brown, Brownell, Delaney, McMeekin, Racco.

The Chair: I declare section 13.1 lost.

Do I have consent for block consideration of sections 14 to 46? Fine.

Shall sections 14 to 46 carry? Carried.

Section 47.

Mr Martiniuk: I move that subsection 47(1) of the bill be amended by adding the following clause:

"(c) requiring"—

The Chair: It's clause (e), I believe.

Mr. Martiniuk: Oh, sorry, clause (e).

"(e) requiring that rear window captioning for film meet the prescribed standards."

If I may speak to it, I just reiterate what I have said in the past.

As I say, I don't have my reading glasses this morning, which leaves me with a disability, and when we're talking about disabilities, I know how uncomfortable it makes me feel. I can't imagine the feelings and emotions of a person coming to this committee with a disability of a hearing impairment, and how these people must feel in our society, where there are so many barriers against them. That is the intent of the amendment.

Mr. Kormos: Once again, New Democrats applaud Mr. Martiniuk for this amendment, and we support it enthusiastically.

Mr. McMeekin: I'll applaud Mr. Martiniuk too for his concern but will declare that we differ in terms of how best to get there. Based on the advice we're getting from the human rights folk and the fact that this is again before the courts, we would be out of place to be—can you imagine going through the tribunal and somebody coming in and saying, "Well, Your Honour, you're redundant. Mr. Kormos, Mr. Martiniuk, Mr. McMeekin, Mr. Racco, Mr. Delaney and what have you have already prejudged this. They didn't want to hear anything about the cost to anybody or the options or working together; they just wanted to preclude the hearings"? I don't think that's a wise course.

The advice we're getting is that it's inappropriate in the context of this particular bill, which is why the government will not support it.

Mr Kormos: It's incredible how politicians who will, from time to time, whine and moan and groan about so-called judicial activism, at the same time fail to under-

stand that so-called judicial activism is the result of gutless politicians who won't seize issues by the horns and enact appropriate legislation. How many more examples do we have to have where Parliaments or Legislatures have been delinquent or, as I maintain, outright gutless in refusing to deal with issues or running from issues, which is why they end up before these tribunals? Chief Justice McMurtry has made that point over and over again, seemingly to people who have no interest whatsoever in listening to him.

A recorded vote.

The Chair: Are there any further comments on subsection 47(1)? We have a request for a recorded vote.

Ayes

Kormos, Martiniuk.

Nays

Brown, Brownell, Delaney, McMeekin, Racco.

The Chair: It is lost.

Shall section 47 carry? Carried.

Do I have unanimous consent for block consideration of sections 48 to 53?

Shall sections 48 to 53 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 158 carry?

Mr. Kormos: Recorded vote.

Ayes

Brown, Brownell, Delaney, McMeekin, Racco.

Nays

Kormos, Martiniuk.

The Chair: Carried.

Shall I report the bill to the House?

Mr. Kormos: Recorded vote.

Ayes

Brown, Brownell, Delaney, McMeekin, Racco.

Nays

Kormos, Martiniuk.

The Chair: Carried.

Any other business before the committee? I declare this committee adjourned.

The committee adjourned at 1025.

CONTENTS

Wednesday 27 April 2005

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Président
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr. Michael A. Brown (Algoma–Manitoulin L)
Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)
Mr. Kevin Daniel Flynn (Oakville L)
Mr. Frank Klees (Oak Ridges PC)
Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)
Mr. Mario G. Racco (Thornhill L)
Mrs. Elizabeth Witmer (Kitchener–Waterloo PC)

Substitutions / Membres remplaçants
Mr. Gerry Martiniuk (Cambridge PC)
Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot L)

Clerk / Greffier
Mr. Katch Koch

Staff / Personnel
Ms. Margaret Drent, research officer, Research and Information Services
Mr. Michael J.B. Wood, legislative counsel

JP-27

ISSN 1710-9442

Legislative Assembly of Ontario

First Session, 38th Parliament

Assemblée législative de l'Ontario

Première session, 38e législature

Official Report of Debates (Hansard)

Wednesday 4 May 2005

Journal des débats (Hansard)

Mercredi 4 mai 2005

Standing committee on justice policy

Law Enforcement and Forfeited Property Management Statute Law Amendment Act, 2005

Comité permanent de la justice

Loi de 2005 modifiant des lois en ce qui concerne l'exécution de la loi et l'administration des biens confisqués

Chair: Shafiq Qaadri
Clerk: Katch Koch

Président : Shafiq Qaadri
Greffier : Katch Koch

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Wednesday 4 May 2005

Mercredi 4 mai 2005

The committee met at 1003 in room 228.

LAW ENFORCEMENT AND FORFEITED PROPERTY MANAGEMENT STATUTE LAW AMENDMENT ACT, 2005

LOI DE 2005 MODIFIANT DES LOIS EN CE QUI CONCERNE L'EXÉCUTION DE LA LOI ET L'ADMINISTRATION DES BIENS CONFISQUÉS

Consideration of Bill 128, An Act to amend various Acts with respect to enforcement powers, penalties and the management of property forfeited, or that may be forfeited, to the Crown in right of Ontario as a result of organized crime, marijuana growing and other unlawful activities / Projet de loi 128, Loi modifiant diverses lois en ce qui concerne les pouvoirs d'exécution, les pénalités et l'administration des biens confisqués ou pouvant être confisqués au profit de la Couronne du chef de l'Ontario par suite d'activités de crime organisé et de culture de marijuana ainsi que d'autres activités illégales.

SUBCOMMITTEE REPORT

The Chair (Mr. Shafiq Qaadri): Mesdames et messieurs, je rappelle à l'ordre la réunion du Comité permanent de la justice. Ladies and gentlemen, may I have your attention, please. I'd like to call the committee to order.

This is the standing committee on justice policy. As you know, we'll begin public hearings on Bill 128, An Act to amend various Acts with respect to enforcement powers, penalties and the management of property forfeited, or that may be forfeited, to the Crown in right of Ontario as a result of organized crime, marijuana growing and other unlawful activities.

May I call for the report on subcommittee business.

M. Bob Delaney (Mississauga–Ouest): Monsieur le Président, en français ou en anglais?

Le Président: En anglais, s'il vous plaît.

M. Delaney: D'accord.

Mr. Peter Kormos (Niagara Centre): Talk about affectations.

Mr. Delaney: I come by it honestly. I was born in Quebec.

Your subcommittee on committee business met on Monday, April 18, 2005, and recommends the following with respect to Bill 128, An Act to amend various Acts with respect to enforcement powers, penalties and the management of property forfeited, or that may be forfeited, to the Crown in right of Ontario as a result of organized crime, marijuana growing and other unlawful activities:

(1) That the committee meet for the purpose of holding public hearings in Toronto on Wednesday, May 4, 2005, and if necessary on Thursday, May 5, 2005.

(2) That the clerk of the committee, as directed by the Chair, advertise information regarding the hearings in the following newspapers for one day each: L'Express Toronto, the Globe and Mail, the National Post, the Toronto Star and the Toronto Sun.

(3) That the clerk of the committee, as directed by the Chair, also post information regarding the hearings on the Ontario parliamentary channel and on the Internet.

(4) That the deadline for receipt of requests to appear be Monday, May 2, 2005, at 5 p.m.

(5) That the clerk of the committee, in consultation with the Chair, be authorized to schedule all interested presenters on a first-come, first-served basis.

(6) That the length of presentations for witnesses be 15 minutes for groups and 10 minutes for individuals.

(7) That the deadline for written submissions be Thursday, May 5, 2005, at 5 p.m.

(8) That the research officer provide a summary of presentations by Friday, May 6, 2005.

(9) That the administrative deadline for submitting amendments be Monday, May 9, 2005, at 5 p.m.

(10) That clause-by-clause consideration of the bill be scheduled for Wednesday, May 11, 2005.

(11) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any preliminary arrangements to facilitate the committee's proceedings.

This, Mr. Chair, is the report of your subcommittee.

The Chair: Any comments or debate?

Mr. Garfield Dunlop (Simcoe North): A question on the subcommittee: I'm wondering if we could change the date or get a little more clarification around the clause-by-clause consideration. We have it scheduled for May 11. We know that's budget day and a number of us would like to go into lockdown. I'm one who would

probably like to do that. I'm wondering if there's any chance we could change that clause-by-clause to another day.

The Chair: If there's consent for that, we can move that now. Is there any comment?

Mr. Kormos: If I may, we've got to do this relatively quickly. What are you proposing?

Mr. Dunlop: A day besides—

Mr. Kormos: I know you're proposing a day besides May 11, obviously, but what date? What's available to us?

The Chair: May 12.

Mr. Dunlop: May 12 would be fine.

Mrs. Liz Sandals (Guelph–Wellington): That creates more of a problem for me in that I'm no longer able to go to public accounts two weeks in a row. I must say I prefer the Wednesday. Can we start at 9 on the Wednesday morning in the hopes that we would be done fairly expeditiously?

Mr. Kormos: Chair, I don't anticipate lengthy clause-by-clause. We're supporting the bill. My impression is everybody's supporting the bill, so I don't anticipate lengthy clause-by-clause. I'm prepared to start at 9, 9:30. I don't think it's going to take us very long at all.

Mrs. Sandals: My sense is that if we were to start—sorry, I'm just speaking out, Mr. Chair—at 9, folks who wanted to go early to the lock-up could be in reasonably early.

The Chair: Is that agreeable, Wednesday, May 11, 9 a.m.?

Mr. Dunlop: Nine would be fine with me. I don't think we should jump to conclusions before we even start our committee hearings on what might be amended. We've got a lot of deputations here and there might be a lot of recommendations coming forward.

Mr. Kormos: I'm pretty good at anticipating—

Mr. Dunlop: OK.

Interjection.

Mr. Dunlop: Then why do we have so many hearings?

Mr. Delaney: I wouldn't be betting against Peter on this one.

The Chair: Formally, Wednesday, May 11, 9 a.m. is the subcommittee meeting next. Thank you.

Any further comments, debates? No. All in favour of the subcommittee report? Any opposed? Carried.

ONTARIO ASSOCIATION OF CHIEFS OF POLICE

The Chair: I'd now like to move to our first presenter, who is Mr. Ron Taverner, representing the Ontario Association of Chiefs of Police, as well as superintendent of police for the great riding of Etobicoke North, 23 Division.

Mr. Taverner, you'll have 15 minutes to present. Any time remaining will be distributed amongst the parties evenly. Please begin, sir.

Mr. Ron Taverner: Thank you for the opportunity to address the committee this morning. My name is Superintendent Ron Taverner of the Toronto Police Service. I'm here today as chair of the Ontario Association of Chiefs of Police substance abuse committee.

The OACP is the voice of Ontario's police leaders. Our members are senior leaders of Ontario's provincial, regional and municipal police services. We are also proud to have representation from the RCMP and First Nations Police Services on our board of directors.

Ontario's police leaders appreciate the support of our elected officials at Queen's Park for police efforts to combat marijuana grow operations in Ontario. These criminal activities pose a real and growing danger to Ontarians and the solutions must involve not just police but government and the corporate sector, as well as ordinary citizens. Our members particularly welcomed the opportunity to work with the Ontario government on the Green Tide Summit last year and the ongoing work of the Green Tide working group.

The OACP has supported the intent of the bill in principle. While the legislation is a positive step in addressing the dangers of marijuana grow operations in the province, we believe there are some issues that must be addressed before the legislation is passed in order to make it an effective tool against grow operations.

1010

One of the main issues raised at the Green Tide Summit was the lack of information-sharing by the stakeholder agencies, due to real or perceived issues with the privacy and freedom-of-information legislation. At that time, it was recommended that the government review and amend the existing legislation so as to remove any actual or perceived impediments to the bona fide stakeholder agencies.

In our view, Bill 128 does not address this issue. We recommend that some form of change to the provincial and municipal freedom of information and protection of privacy acts be enacted that would allow stakeholders to share information. Sectors such as electricity and insurance currently are encumbered by sector-specific legislation which prevents adequate sharing of information with police. It would be helpful if this important issue was addressed in Bill 128 or subsequent legislation.

While the focus of attention in Bill 128 is primarily on marijuana grow operations, police services recognize the illegal production facilities that produce ecstasy and methamphetamines are growing at an alarming rate. These operations present an equal if not greater potential threat to community safety.

The amendments in Bill 128 that pertain to the building code and the inspection of buildings are specific to grow operations only. We feel that these amendments should apply to all illegal drug production operations. This bill presents an opportunity to address the dangers posed by clandestine labs at the same time as illegal grow operations. Bill 128 should be amended to include these clandestine labs now, rather than waiting until they are out of control.

The Building Code Act amendments in Bill 128 require municipal inspectors to conduct inspections of buildings upon notification by police that the building contains a grow-op. We believe that municipal inspectors should also be given sufficient power to gain entry to such buildings if resistance is met or forced entry is required.

The bill also gives building inspectors the power to inspect and issue orders to rectify building code violations. However, the legislation as proposed does not extend the same power to fire, health and municipal inspectors when it comes to grow-ops. We suggest that Fire Protection and Prevention Act, health act and Municipal Act inspectors also be afforded the same power as building inspectors when confronted with grow-ops.

In British Columbia, legislation exists that permits municipalities to enact bylaws that allow for the recovery of costs in respect of enforcement of grow-ops. This includes investigation, identification, entry, securing and remediation. Bill 128 should provide the same authority to Ontario municipalities. Municipalities should be entitled to place a lien on premises in respect of such costs, which should have priority lien status for the purpose of subsection 1(2.1) of the Municipal Act, 2001. Revenues generated by such a cost-recovery bylaw could be directed toward providing resources to be used to combat grow operations.

Our police services report that the vast majority of grow operations are occurring in rental properties. There currently exists no legislative framework that requires property owners to exercise due diligence over what is taking place on their properties. This negatively impacts on law enforcement ability to seize or restrain offence-related property or proceeds of crime.

We suggest that owners/landlords should be required to exercise all due diligence in respect of illegal, clandestine drug production activities carried out on premises owned or rented by them. Failure to exercise such due diligence would constitute a provincial offence resulting in charges, penalties and possible forfeiture of the property involved. The due diligence should include responsibility for property owners to conduct reasonable inspections, subject to appropriate conditions, respecting the rights and privileges of tenants.

As a complement to the due diligence requirements and obligations on property owners, we recommend that municipalities that choose to do so be given the explicit legislative authority to pass bylaws to establish a rental property registry and/or a landlord registry. This would provide the public with the enforcement history information pertaining to a property.

Bill 128 does not place any obligation on property owners/landlords and real estate agents acting on their behalf to inform prospective purchasers or tenants of real estate of its past enforcement history. We believe that mandating disclosure of an execution of a warrant by police and/or an order issued under applicable legislation as a result of clandestine lab production activity should be an expected part of any sale or rental transaction.

We appreciate that Bill 128's stated objective, to amend various acts with respect to enforcement powers, penalties and the management of property forfeited, or that may be forfeited, to the crown in right of Ontario as a result of organized crime, marijuana growing and other unlawful activities, may not allow the concerns that have been outlined to be addressed through this legislation.

Bill 128 is a good first legislative step in the fight against marijuana grow operations in Ontario. We have tried to indicate how the legislation can be improved.

We remain committed to working with the government of Ontario and our community partners to effectively address this serious threat to public safety in Ontario.

Thank you for the opportunity to address your committee. I would be pleased to answer any questions you may have.

The Chair: Thank you, Mr. Taverner. We have about seven minutes in total, to be divided evenly. We'll start with the official opposition party.

Mr. Dunlop: Thank you very much Mr. Taverner—Chief Taverner.

Mr. Taverner: You can call me whatever you want, sir, but it's not "chief."

Mr. Dunlop: We certainly appreciate your coming to the committee today, particularly when you are chair of the substance abuse committee of the Ontario Association of Chiefs of Police. I think the committee should take your advice and your presentation to heart. You're suggesting that in this legislation the opportunity is there to make amendments that can effectively improve the legislation to make it easier for you to do your job, or easier for the police services to do their job in Ontario. Is that what you're saying?

Mr. Taverner: Yes.

Mr. Dunlop: I'm interested in the part on the proceeds of crime. Could you elaborate a little bit on that? In some cases there will be some fairly substantial, I would guess, even cash available from some of these operations. Is that what you were getting at, or just the fines themselves?

Mr. Taverner: No. I think the federal proceeds-of-crime legislation is in place to deal with proceeds of crime. One of the things we are asking for is some legislative powers for the municipality to collect so that some funds can go back into the effective investigation, enforcement, entries—these sorts of things. It's very costly. What's going on right now, right across the province—these are very expensive investigations. Sometimes they take a long time to put together. It impacts on policing generally across the province when the resources are going into these things.

A safety issue comes along with that, not only for emergency personnel who are involved in these investigations but for citizens in general. That's why we're trying to increase our ability to deal with grow oper-

ations, not just marijuana grow operations but clandestine lab operations in general.

The Chair: Thank you, Superintendent Taverner. Now to you, Mr. Kormos.

Mr. Kormos: Thank you, sir. I agree with your observations about the methamphetamine labs and these other chemical operations and your observation that they may well be more dangerous, not necessarily within the context of the building they're operating in, although there are all sorts of inherent dangers in the manufacturing process, but in terms of the product they're producing. On page 7, you've got the request for additional powers for municipal inspectors to enter buildings. I'd ask legislative research to please let us know what the powers are now. I quite frankly don't know.

1020

The other interesting point you make is on page 9, where you propose emulating British Columbia in terms of permitting municipalities to impose liens on premises, and that brings me to landlords. I've got a letter here—from time to time you hear me railing against big corporate landlords, but then there are people like Mrs. Overend. In a letter that's been sent to the committee, she identifies herself as elderly, now having vision problems, owner of two semidetached rental units on Rodney Street in Port Colborne, currently has good tenants, but, as she says, who knows what can happen? I'm concerned about putting a landlord like Mrs. Overend—a senior citizen, doing her best—in an overly difficult position. I know you've talked about due diligence on the part of landlords. Here's an elderly woman whose vision is failing. She's doing her best. We don't want to be overly tough on these kinds of people, do we?

Mr. Taverner: No, absolutely not. We're not trying to target the good, honest citizen who owns some properties and things like that. But going along with that, it's dealing with a landlord-tenant registry that allows municipalities, if they so wish, to enact that legislation so that when a grow-op is discovered, new tenants or prospective purchasers are made aware of that, because of the dangers that are involved and remediation—

Mr. Kormos: That one's interesting. I wish Ms. Marsales was here. She'd have some comments about that. Perhaps legislative research could respond to the concerns of Mrs. Overend. I can't find anything in the bill that would put the onus on landlords, as feared by Mrs. Overend in her letter. I'm wondering if legislative research, with the assistance of civil servants, could help us determine whether or not her fears are grounded. I don't think they are, but—

The Chair: Thank you, Mr. Kormos. We now move to the government side.

Mr. Delaney: I have just one question. You stated earlier, "Municipalities should be entitled to place a lien on premises in respect of such costs, which should have priority lien status for the purpose of," etc. My question is, should the property owner himself or herself be a victim of the crime? In other words, you, for example, are transferred out of town for about two years, you rent your home to a couple who represent that they're going to live in it and, while you're out of town, you discover that your home has been turned into a grow-op. If you are duped into renting your property, are you not advocating penalizing the innocent?

Mr. Taverner: Certainly we don't want to penalize anyone who is innocent of a crime, but we feel there should be some due diligence placed on people when they're renting a premises. Obviously it's a business; they're making money from it. There should be some due diligence on them to make sure that there's no criminal activity taking place, to the best of their ability.

Mr. Delaney: How would you define that due diligence?

Mr. Taverner: What we're proposing is that there be some right of reasonable inspection of a premises, for example. We're not talking about walking into a place in the middle of the night and doing an inspection, but, on notification, having the ability to go in and make sure that the premises is not being used for a marijuana grow operation, for example.

The Chair: Thank you, Superintendent Taverner, for your remarks, the transcript of your remarks and your continued community outreach to the people of Etobicoke North.

POLICE ASSOCIATION OF ONTARIO

The Chair: I'd now like to welcome our next presenter, Mr. Bruce Miller, the chief administrative officer of the Police Association of Ontario. Mr. Miller, I remind you, you have 15 minutes in which to present, and, as you know, we'll distribute time afterward. Please begin.

Mr. Bruce Miller: Thank you, Mr. Chair. My name is Bruce Miller and I'm the chief administrative officer for the Police Association of Ontario. I was also a front-line officer for over 20 years with the London Police Service prior to taking on my current responsibilities.

The Police Association of Ontario, or PAO, is a professional organization representing over 21,000 police and civilian members from 63 police associations across the province. We've included further information on our organization in our brief.

We appreciate the opportunity to address the standing committee on Bill 128 today and would like to thank all the members for their continuing efforts for safe communities.

I was at home in London this weekend, and the headline in the London Free Press read, "Do your Neighbours Grow Pot?" The opening line stated, "Walk 10 minutes in any direction and you're likely to find a marijuana grow house."

The reality was reinforced to me about three years ago. The power went off in our home one morning. I looked outside and saw several police cruisers four or five doors down the street. I walked down to speak to the officers and was shocked to discover that the nice, elderly couple who had been living there had in fact been

operating a clandestine drug operation. Maybe that's why I took up my new position.

It seems clear that indoor marijuana cultivation can best be described as a problem that is completely out of control. Drug enforcement across Ontario has been relegated to a reactive, as opposed to a proactive, policing function in order to deal with this problem. Many other illegal drug activities cannot be investigated because of the burgeoning problem of grow-ops.

Police personnel view commercial grow operations as an increasing threat to public health and safety, as well as a major contributor to organized crime activity. Grow-ops, which are frequently set up in residential neighbourhoods, pose a particular threat to community safety. The growth of clandestine drug operations is unprecedented, and staggering in its size. I think everyone is aware of the scope of the problem, the associated dangers, links to organized crime and high financial cost to society. Our submission will centre on our recommendations to deal with this issue and why we support Bill 128.

We would like to congratulate Minister Kwinter for taking a leadership role on this issue. The minister introduced this legislation and also established the Green Tide action group to look at raising awareness and to come up with solutions. The PAO has had representation on this committee from day one.

In January of this year, we convened a meeting of front-line police experts on this subject. One of them is actually in the room today, OPP Detective Staff Sergeant Rick Barnum from the drug enforcement unit. They examined the bill, and there was universal support for it. We have copied their recommendations to you, but I'd like to take a moment to highlight some of the major ones.

First of all, the PAO believes that the legislation should be amended to cover all clandestine drug operations or so-called "problem premises." All of these problem premises have serious health and safety considerations. Methamphetamines, for example, have a very serious risk of explosion in their production. Mould has been clearly identified as a major risk in grow-ops and has also been found in other types of clandestine labs. Toxic waste is another by-product of clandestine labs.

The difficulty is that by referring only to grow-ops, we restrict the legislation to one portion of a much greater problem. We would recommend that the proposed legislation be amended to cover all drug-related problem premises. If this is not possible, we would urge the passage of this bill and suggest that new additional legislation be introduced to cover this important area.

Everyone involved in these investigations clearly understands that grow-ops and other types of clandestine laboratories are a serious health and safety risk to emergency workers and members of the public. They have caused deaths in other jurisdictions, and immediate action must be taken to ensure that similar tragedies do not occur in Ontario. We believe that two areas must be addressed to protect both the public and those who protect them.

The first area deals with safety equipment. The PAO recommends that a working group should be established by the Ontario Ministry of Community Safety and Correctional Services to prepare regulations and standards under the Police Services Act outlining adequate mandatory equipment for drug enforcement units and front-line police personnel. Types of equipment should include outerwear, footwear and masks. In addition, regulations must be set for the provision and use of various equipment, including air-quality monitors and other related devices. The regulation must not be limited to just grow-ops, but should include all clandestine drug operations.

1030

The second area deals with training. Front-line police officers and drug enforcement personnel must receive training in the health and safety hazards of clandestine laboratories. We are pleased to report that the Ontario Police College is moving quickly to address this issue. We understand that at this time, as with the equipment, this training is not consistent or mandatory throughout the province. Adequate mandatory training standards must be developed and provided to all personnel. We believe that there is an opportunity to cover the costs of these two areas through the forfeiture sections in the proposed legislation.

I think everyone realizes that the scope of this problem has put a strain on police resources. Adequate funding and staffing levels for police services in this area is always a concern.

Lax federal laws and sentencing provisions help to make this a high-profit and low-risk venture. This brief is written from a provincial perspective. As a result, our submissions do not address the need for action by the federal government. Suffice it to say, we strongly believe in the need for stiffer penalties and more effective federal legislation, as Canada is quickly becoming a haven for this type of activity.

Bill 128 is a positive step forward in battling this problem. We have made some suggestions for change. These suggestions came from the learning process that we went through following the introduction of this legislation. Bill 128 will help to protect both police personnel and the communities they serve.

In closing, I'd like to thank the members of the committee for the opportunity to appear today. We greatly appreciate your interest in community safety and would be pleased to answer any questions that you may have.

The Chair: Thank you, Mr. Miller. We have about eight minutes to distribute. We'll start with Mr. Kormos.

Mr. Kormos: Thank you, sir. The courts have ruled—correct me on the terminology—using an airplane or a helicopter with thermal imaging to pick out grow-ops as a legitimate, charter-proof investigative tool. What's involved, and what are the difficulties that police have in utilizing that type of technology to at least identify grow-ops?

Mr. Miller: I suppose the first answer is that some of that technology is available, and the courts have certainly placed some limitations on it. The question is that there

just are so many grow operations and clandestine laboratories out there now that even if they were all identified, the police could never address them in a timely fashion. There are just too many. We're being overrun.

Mr. Kormos: As I understand it, conducting this type of investigation, if you're going to make it as defence-proof as you can, is incredibly labour-intensive.

Mr. Miller: That's correct. We're just trying to put the cork in the bottle in many cases; we're just going out and trying to clean up as many of these places as we can.

Mr. Kormos: From a policing perspective, how do you prioritize? How do police prioritize, or is it a mish-mash, depending upon which jurisdiction you're in?

Mr. Miller: In policing, our priority is always community safety, so we would look at it from a community safety aspect. But there is a problem with the increasing numbers of these things.

Mr. Kormos: But you're saying that you have scarce resources, that you couldn't possibly bust them all. That's what you're saying.

Mr. Miller: One of the problems it comes back to is the federal laws dealing with this issue. It is such a high-profit, low-risk venture. When you look at the penalties south of the border—

Mr. Kormos: Fair enough, but that's a different issue from your saying that you couldn't possibly bust them all because you don't have the resources. Is that accurate?

Mr. Miller: That's correct.

Mr. Kormos: Then how do you prioritize? I'm not being critical. How do you prioritize, then, as a police service? Do you go for the biggest? Do you go for the ones closest to schools? I don't know.

Mr. Miller: I think community safety is always one of the biggest factors, and certainly larger operations. But it would vary across the province with the numbers that are out there, and also with the quality of the information. There are so many factors that come into investigations.

The Chair: We now move to the government side. Ms. Sandals, please.

Mrs. Sandals: Thank you, Bruce. If we could look at your first recommendation, where you're talking about all clandestine drug operations and the effects that those might have on the premises, could you give me some information? When we look at grow-ops, when the grow-op is removed we know that the building may remain with a number of problems. If they've tapped into the electricity, there may be problems with the wiring not being up to standard and a fire hazard. We may have structural issues because of what they've done to the structure of the house. We may have health issues because of the mould issues.

I understand what you say, that while the operation is in effect there may be toxic chemicals or there may be a risk of explosion, so there is some risk to emergency workers coming in. Once the other manufacturing operations are dismantled, is the building itself inherently dangerous?

Mr. Miller: There are still the same concerns with clandestine drug labs, certainly in terms of long-term effects of toxic waste and in terms of structural deficiencies. Mould is also a big issue with all clandestine drug laboratories. So there are those same structural concerns that Bill 128 is addressing. That's why we're suggesting—if it can be done in the definition section—that we refer to these places as "problem premises" and cover off everything. But we don't want to hold up the passage of the bill. We support the bill. To be frank, the clandestine drug problem is relatively newer and we're just becoming aware of its scope. If the changes can't be made now, we'd urge the committee to pass the bill and to look at legislation this fall to address that.

Mrs. Sandals: My understanding is the wording that is currently there would allow it to be expanded beyond marijuana grow-ops in the future, so there is a hook in the legislation that would allow future expansion into other areas.

Mr. Miller: Or if there was a definition of clandestine drug labs in the legislation.

Mrs. Sandals: Thank you for clarifying that.

Mr. Dunlop: I have a couple of quick questions, Bruce. Thanks so much for coming over today.

The first is on the clandestine drug operations. You're saying that they're growing at an alarming rate as well. What kind of impact, today, are police services in Ontario having on this growth in terms of numbers? Are we catching up or are we falling behind on this, as we speak?

Mr. Miller: The true answer is that we probably don't know the complete extent of the problem. I've spoken to many drug squad officers across the province. They can go out and deal with one clandestine lab a day and still not be done at the end of the year. They're just dealing from one to one to the next one.

The problem is that drug enforcement in the other areas is being left alone. The traditional investigations we had before this—because there are just so many clandestine labs out there, and there are so many health and safety concerns with them, they are a priority for local services.

Mr. Dunlop: The more I read about this and the more we see in the media, it almost looks like we are becoming a haven for drug lords in this area. I think a lot of it has to do with the penalties. I look at the marijuana grow-op at the former Molson's plant in Barrie. The folks who were charged walked out and got $20,000 bail or something. They're probably out right now doing other ones, for all I know.

I wanted to ask a question, and maybe you can answer it or maybe the staff with the ministry can answer it. Would an operation like the Molson's plant in Barrie be included in this legislation? Is that your understanding? It's just a yes or a no; that's all I want to know on it. In the media releases etc., the bill has been billed as a residential grow-op operation. I'm wondering at what point they cut off, if they do at all.

Mr. Miller: I'd certainly want to defer to some of the experts here in this room today. My understanding is that

certain aspects would be covered, but that question is probably better answered by someone else.

Mr. Dunlop: I would like to get a response from somebody from the ministry on that, to see what the intent is, because I can't really determine myself what is expected.

The Chair: I think the procedure is we would refer that question to the parliamentary assistant.

With that, I'd like to thank you, Mr. Miller, for your deputation on behalf of the Police Association of Ontario.

1040

LARGE MUNICIPALITIES CHIEF BUILDING OFFICIALS GROUP

The Chair: I would now welcome to the floor Ms. Ann Borooah, chief building official for Large Municipalities Chief Building Officials Group. Ms. Borooah, you have 15 minutes in which to present. Please begin.

Ms. Ann Borooah: Thank you, Mr. Chair and members of the committee. As you noted, I'm here representing a group of chief building officials from the largest municipalities in Ontario, which are those with populations over 50,000 in size. That's approximately 40 municipalities. Copies of our letter, which we've provided to the committee, have been provided to the clerk.

We have support for the overall objectives of the legislation dealing with clandestine marijuana operations in Ontario municipalities, but have two major concerns with the role of chief building officials in this process. Principally, we find the legislation too prescriptive in terms of allocating responsibilities to chief building officials without actually providing additional powers in order to carry out our responsibilities.

The two issues we have are the prescriptive requirement that an inspector investigate all buildings brought to the attention of the chief building official by the police that are confirmed to have marijuana grow operations in place, and the obligation, once we have inspected those properties, to issue an order if they're deemed unsafe by the inspectors. We don't dispute our responsibility for ensuring public safety with regard to building construction, renovation and change of use under the code, but the current Building Code Act gives us more discretion to exercise those responsibilities.

In addition, in the context particularly of larger municipalities, it's often other officials who play the first response role. You'll be hearing later this morning with respect to the protocol in the city of Toronto, where in fact it's not the chief building official who plays the first response role.

Therefore, we recommend additional flexibility in the bill to allow municipalities to designate the appropriate official to respond to the notice from the police, where their authorities and powers may be more consistent with the issues that are found on the premises. As a fallback, we're prepared to agree to the responsibility being assigned to the chief building official, since it's mandatory for councils to appoint a chief building official, if there is a concern with respect to identifying a person who could be identified in any municipality.

We are more concerned with respect to the prescriptive requirements about what we do once we're notified. The legislation requires that we inspect, assuming that we need to enter the premises to deal with the issues. It's not always the case that it's necessary to enter the premises to determine whether or not an unsafe condition exists. In fact, there's some potential that you're putting us in a situation where we would be in conflict with the Occupational Health and Safety Act, if we have reason to believe that there's a danger to the employees who would be asked to enter the premises.

In addition, if the unsafe condition is encountered by the building inspector, we are then directed to issue an unsafe order. Under the current Building Code Act, we have more options at our disposal if we find an unsafe condition. We suggest that there's no reason to believe that chief building officials would not exercise those options if they found an unsafe condition. We recommend that the legislation be modified to allow the chief building official or other inspectors entering the premises to determine the most appropriate response.

That ends our two main points with respect to the role of chief building officials. I'd be happy to answer any questions the committee may have.

The Chair: Thank you, Ms. Borooah. We have about 10 minutes to distribute evenly.

Mrs. Sandals: I understand your first recommendation—you would prefer that the municipality be named, rather than the chief building inspector—but the second recommendation I'm a bit unclear on. It would seem to me that the way the bill is phrased, it's mandatory that there be an inspection, but then, depending on what the inspector finds and whether the building is unsafe or not, the building inspector or whoever the municipality assigns to attend would then be making their recommendation based on what they find, which would seem to be what you're requesting in the recommendation. I don't understand the distinction.

Ms. Borooah: My understanding of the legislation is that once we determine that an unsafe condition is present on the premises in the context of what's unsafe as defined under the building code and the Building Code Act, we are then required by the legislation to issue an order that it's unsafe. In the case of the current legislation, subsection 15(3) allows us the discretion whether an order is the appropriate response to the unsafe situation. We could in fact use other orders under the legislation or a co-operative approach, which is usually our first response with the owner of the premises, to work out an arrangement where the property would be remediated or made safe. Essentially, it homes in on only one of the powers we already have, and that is to issue an unsafe order, and doesn't give us a new power, but says that's the thing we have to use to respond.

What we suggest is that you allow us the discretion we currently have to use all the powers under the act to make the situation safe, or in fact if we think it's not an area

that we're best to respond to, to refer it to another official who may have better powers available to them to deal with the particular situation at hand.

Mrs. Sandals: Presumably if the first recommendation were acted on, it would be automatic that that would be distributed among the appropriate municipal officials. It would seem to me that if you find something is unsafe, as a marijuana grow-op, that a reasonable response is that you would in fact issue an order making sure that that premise is made safe. I'm just having a bit of a problem understanding the resistance to it being mandatory that you arrange to have the premise made safe.

Ms. Borooah: Our issue is that you're removing discretion we currently have to deal with an unsafe condition, where there may be a more appropriate response. We might move immediately, for example, to an emergency order, or there may be other powers within our disposal, such as requiring that they obtain a permit for work that has been undertaken, or, as I say, if it's an issue that perhaps is addressed in our property standards bylaw that wasn't identified in the first instance, we refer that matter to property standards or health if in fact it came to our attention in the first place.

Mrs. Sandals: What success rate do you have with those sorts of things being acted on, given that you may have a hostile owner here?

Ms. Borooah: You may have a hostile owner. In that case, that might be the right response. We're not saying it's not always the right response, but I think we're saying, "Trust us," that we can judge what the right response is under the circumstances. I don't think there's any reason to think we would turn our back to the issue any more than we would today when an unsafe condition is brought to our attention.

The Chair: We now move to the Tory side.

Mr. Dunlop: Thank you very much, Ms. Borooah, for being here today. Through you or the parliamentary assistant, I want to get a clarification on something I brought up earlier, and this is on Bill 128. Is it your understanding that this bill just applies to residential grow-ops, or are large commercial operations included as well? I'd like to get that clarification before we go any further in the meeting. Can the parliamentary assistant, if you would have—

Mrs. Sandals: I'm not sure that you really want me to comment on that, but I will get the legal opinion and bring it back tomorrow—

Mr. Kormos: Land or a building?

Mrs. Sandals: Yes. I'm not aware that it is restricted to residential, but I will confirm that with legal advice tomorrow.

Mr. Dunlop: OK, because I would like that. I'm thinking particularly in these large ones like we've seen. I brought up earlier the Molson's plant in Barrie, and there was a cover-up—

Mr. Kormos: So are the Tories getting soft on mere domestic residential grow-ops?

Mr. Dunlop: No. I want to know if this legislation is asking the police and building officials to cover off all of the operations there could be in the province of Ontario, or are we just referring to residential, subdivision-type developments?

1050

Ms. Borooah: Mr. Chair, would you like my understanding of reading the legislation?

The Chair: Please.

Ms. Borooah: I don't see anything in it that narrows it to only residential operations. I would read the amendments to the act as applying to any land or building, as noted.

Mr. Dunlop: I'm saying that to the chief building official, because when the bill was announced, when the minister did press conferences and that type of thing on it, it was billed as residential grow-op legislation. It didn't refer at that point to commercial and industrial-type buildings. I'm curious how far we would go with that.

Mrs. Sandals: I have just received confirmation from our lawyers that the act, as drafted, would apply to all buildings, and that would include residential, commercial and industrial.

Mr. Dunlop: Thank you so much.

The Chair: Any further questions, Mr. Dunlop?

Mr. Dunlop: No, that's fine at this point.

The Chair: Mr. Kormos, you have extra time. Please go ahead.

Mr. Kormos: I appreciate your submission. It's an interesting piece of legislation.

In the United States, there are provisions for what is called a sneak-and-peek warrant, and that is where you don't really have very much grounds. You can go in there, sneak and peek, find your grounds, go out, go back before the equivalent of a JP and then get your warrant.

My concern is this: Take a look at the very first section of the Building Code Act amendments. The act requires—because it's mandatory—that a building inspector, when merely notified by a police force that the building contains a marijuana grow operation—there are no bone fides required. Do you know what I mean? The police don't have to have busted the place. Therefore the police have the capacity to use building inspectors to, in effect, conduct a sneak-and-peek. Do you understand what I'm saying?

In other words, merely saying, "Ma'am, I am notifying you that that's a marijuana grow-op"—without defining "marijuana grow-op," because there's no definition. It could be grandma raising one plant, because she's got the glaucoma, or it could be a big commercial operation. Because the cops can't get a warrant, they use you, a building inspector, to go in there. Do building inspectors relish that role? That's my question.

Ms. Borooah: No. I think that was consistent with my second point, although, if I could clarify something, notwithstanding that first section of the legislation, I don't think it actually changes the restrictions on our access to the properties. However, in the event that we

are in a situation where we are attempting to enter and may in fact get some mechanism to enter the properties, we have concerns that there may be a danger to building officials that is inappropriate.

Mr. Kormos: No two ways. This is my concern. You agree with me that the act says you can enter without a warrant, which is something the police can't do, can they, insofar as most of us understand the case?

Ms. Borooah: Well, I don't actually fully agree with you. It says that we may enter with a warrant, but I don't think there have been any changes to subsection 16(1) of the Building Code Act, which requires that we have to get the consent of the occupier to enter if it's a residential premise. There may be some doubt about what the premise is at the time. These things can be grey. If it is in fact grey about whether it's residential or non-residential, I believe subsection 16(1) of the Building Code Act still applies. We would therefore be required to get a warrant if our access was denied.

Mr. Kormos: That's an interesting observation, because you talk about a conflict of sections here. Perhaps, Chair, we should ask legislative research, with the assistance of the highly capable civil service, to explain to us whether this section is meant to override the warrant provision. Because this is what's of concern. You understand what I'm saying?

This looks like this is a very fragile section. The police can't enter without a warrant, but if the act says you can enter without a warrant, then the police are going to use building inspectors—overworked, underpaid, without the tools to protect themselves from dangerous scenarios, right?—to go in there and do the front-line investigation in what could potentially be a very dangerous scenario.

I think it's an abuse of building inspectors. There doesn't even have to be reasonable grounds to believe that there is an unsafe building. The act is somehow suggesting that one potted pot, one potted plant of pot, constitutes a prima facie building code violation. Therefore, the police use the building inspector sort of like the lead dog or the lead person in a search-and-destroy mission, the most dangerous position. That causes me great concern. I don't know if that causes you concern or not.

The Chair: Thank you, Ms. Borooah, for your deputation on behalf of the chief building officials group.

ALLAN COBB

The Chair: I would now invite Mr. Allan Cobb to the floor. Mr. Cobb is coming to us in his individual capacity as a resident of Scarborough. He has provided the clerk with a written submission. Mr. Cobb, in your individual capacity, you have 10 minutes in which to address us. Please begin.

Mr. Allan Cobb: Good morning. My name is Allan Cobb and I live in Scarborough. Unfortunately, we have had two confirmed grow-op houses and one suspected grow-op house on our small crescent, Temple Bar.

I would like to commend the government for taking this epidemic seriously. I know that our community is certainly much more aware of the damage caused in a neighbourhood where there are grow-op houses. Many within the community have attended meetings organized by the police or by local councillors. Prior to Bill 128—and I am aware that it has received second reading—community and police action have been frustrated by the lack of meaningful legislation and a definite lack of appropriate penalties.

The public is still confused about the possible introduction of legislation at the federal level to decriminalize the possession of small amounts of marijuana and the existence and continuation of grow-op locations. "If only we would legalize marijuana, all would be well." This is obviously incorrect, but there still exists confusion over this issue. I am pleased that this piece of comprehensive legislation addresses this very important issue from a multitude of angles and brings together government, police services, fire departments, hydro, insurance and financial institutions.

It will still be necessary to keep a watchful eye in each community. If these lawbreakers know that local citizens are watchful of changes in the neighbourhood, maybe they will be more hesitant to start a grow operation.

We are hoping that this bill will receive speedy third reading and royal assent before the summer. A strong message will be sent to all communities across the province that Ontario does not welcome grow-op houses and will punish those who dare challenge the law.

I would like to raise a few concerns that may have already been addressed but nevertheless should be asked. We know that home purchasers should be strongly "buyer beware." Will there be protections for home purchasers who might end up in a former grow-op house that was not searched? We are now aware that children live in some of these grow-op houses. Would the Ministry of Children and Youth Services and possibly the children's aid society be involved if such a grow-op house was discovered?

The bill addresses seizure of assets. As you can imagine, several grow-op houses on one street can quickly have a large economic impact on our community. How soon might one expect that these grow-op houses will be fit for resale?

In the past, owners of some of these grow-op houses have rented to tenants, and when the property has been searched and found to be a grow-op house, the owner is often surprised. What are the responsibilities of the owner with respect to the possible conversion to a grow-op house?

Who will be the gatekeepers once this bill has received third reading and royal assent?

In summary, I once again commend the government for recognizing this issue as a serious issue and doing extensive research before bringing the bill to the House for passage. Only when there are appropriate and meaningful penalties and possible jail time will we get somewhere with the perpetrators of this crime and return to safer communities.

The Chair: Thank you, Mr. Cobb. We have about six and a half minutes to distribute.

Mr. Dunlop: Thanks so much for bringing forth your comments. I understand you had a couple of grow-ops in your own neighbourhood?

Mr. Cobb: One beside us and one across the road.

Mr. Dunlop: I wouldn't mind you elaborating a little bit more on that, just for the record, describing how it came about that they were actually discovered and how long they might have been there. I don't know a lot about residential grow-ops.

Mr. Cobb: The one across the road I think most of us were unaware of. It was the first one in the community, as far as I know. Obviously, it was being watched and likely some of the neighbours reported it. All of a sudden there was a search and it was found to be a grow-op operation.

The one beside us was sold last October 31, and this was a suspected one. We raised strong suspicions, because it was under surveillance by the police since the end of October to January, when we became more aware of it.

1100

Some of the signs, which I think most people who live in these communities know now, are that if it's the winter time, snow doesn't last very long on the roof; there's often a stain coming down the siding; people go in there and leave quickly; no garbage is put out, and such. Those are some of the things where one becomes aware that it is an illegal house.

Mr. Dunlop: Thank you so much for coming before the committee as an individual citizen. I appreciate it.

The Chair: Mr. Kormos.

Mr. Kormos: I suppose one of the problems is that if there were a grow operation in my neighbourhood—and if Bruce Miller's right, I only have to walk 10 minutes to find one, either down Denistoun or up Bald Street—I would be disinclined to want to publicize it, because I wouldn't want it to reflect on the remaining houses. You know what I'm saying? It may have the potential to devalue your single largest investment. If you're like most people, your home is your single largest investment. That's one of the dilemmas: On the one hand, you want to speak openly about it—here's Bruce Miller from the Police Association of Ontario. Were you here when he made his presentation?

Mr. Cobb: I was.

Mr. Kormos: Five houses down, a nice elderly couple running a grow-op, wearing tie-dyed T-shirts, no doubt. That was a dead giveaway.

Mrs. Sandals: It was cowboy boots.

Mr. Kormos: Was it cowboy boots? I only wear them in the Legislature, because it gets so deep in here from time to time that, if I didn't, my socks would get wet.

Should there be a definition of "grow-op"? There isn't one currently in the bill insofar as I'm aware. Are we talking about somebody who is growing one plant or somebody who is growing in sufficient quantities to create the dangers that people are acknowledging? One that nobody has spoken about yet is the likelihood of jumping the fuse box so as to jump the meter, and of course the inherent fire danger. Should there be a definition as to what constitutes a grow-op? Because you're a fair-minded person.

Mr. Cobb: For the first question—I think the first reaction might be that you want to hide it, because it might have an impact on your property value, but once a neighbourhood becomes aware that it's so widespread, I think you have to be vigilant and you have to point this out. I think you have to have community meetings. We have to get back to really looking very carefully in each of our communities. I don't think hiding it is going to solve it.

To your second question, I don't write bills, but it might be a good idea to have a definition of what a grow-op is.

Mr. Kormos: Did you hear my concern about the bill using unarmed building inspectors to, in effect, be the bird dog? These are hard-working people, who aren't trained the way police are. Think about it. We're told that these grow-ops, the very commercial ones, have booby traps, that they're inherently dangerous, that the police want to have proper equipment, and here we're telling building inspectors to go in there and inspect before the police even raid the joint? Is that fair to building inspectors?

Mr. Cobb: I've read some of the material on some of these houses being booby-trapped etc., and I know they are dangerous, but I would leave it to the experts as to who should go in first.

The Chair: Thank you, Mr. Cobb. We now move to the government side.

Mr. Mario G. Racco (Thornhill): Mr. Cobb, you asked a number of questions. One of the things this bill is trying to achieve is to assist any potential future buyer that the house he or she buys will be in good condition.

Mr. Cobb: I understand, though, that the house would have to be searched first. It would have to be defined as a grow-op house. Is that not true?

Mr. Racco: I will allow Ms. Sandals to get into more of the specifics, because she is the deputy to the minister. But as the objective—and of course, as you said, it is a criminal matter, which is federal jurisdiction. We are limited at the provincial level as to what we can do. That's why the bill is limited in some ways.

Mr. Chairman, I'll let Ms. Sandals answer the rest of the question.

Mrs. Sandals: Could I just get in a few points of information here? There is no intent that the building inspector would go in before the police had gone in first of all and shut down the grow-op, and then brought in the building inspector once the property is secured and made safe. I'd just like to point that out.

The other piece of information—because there has been some confusion here. The act applies to all buildings; however, the ability to enter without warrant does not apply to residential. In other words, if you were to enter a residential building, there would still be a require-

ment that you have a warrant. This act is not overriding that requirement. But when you put this all together, the order that is presumed here is very definitely that the police would go in and do what is required in terms of legal intervention and making the premise safe. Then the building inspector would come in and see if there is permanent damage that needs to be remedied, which goes to your question, Mr. Cobb, around remedying the damage so that the house can go back on sale as a real residential property that would be safe for future homeowners or tenants.

The Chair: Thank you, Mr. Cobb, for your considered remarks.

LEVINE, SHERKIN, BOUSSIDAN

The Chair: I would now invite our next presenter, Mr. James F. Diamond, solicitor from the firm of Levine, Sherkin, Boussidan, Barristers. Mr. Diamond, you have approximately 15 minutes in which to address us. Please begin.

Mr. James Diamond: I have presentations that unfortunately didn't get prepared in time to be distributed.

My name is James Diamond and I am a Toronto solicitor practising in the firm of Levine, Sherkin, Boussidan. I am counsel for the current class action being brought against the Attorney General of Ontario with respect to the constitutional validity of the civil remedies act. I am here to discuss briefly our concerns with respect to this bill as it affects the civil remedies act. I have no real standing here to discuss the other acts that this affects because that's not part of my purview and retainer as a class action counsel.

I have prepared a brief presentation, and at tab 1 is an outline of what I believe are the top three issues. Because there are only 15 or so minutes allotted, I can't get into anything significant. I do not want to revisit some of the issues that have been raised in the class action dealing with the constitutional validity of the act itself; I want to focus this just upon the draft amendments to the act.

Saying that, the first concern we had was whether or not this bill, as it affects the civil remedies act, should be proceeding while the act itself is under a significant constitutional challenge. It was raised before the Honourable Mr. Justice Loukidelis last October over a four-and-a-half-day hearing. His Honour has still reserved judgment and has indicated that he hopes to have a decision by this summer. That being the case, and not to sound confident in any manner, there is always the chance that my clients would be successful and that the act would be struck down. Our concern is, why are we amending an act that may be moot, and this exercise could be an exercise in mootness to begin with? That was the first point that my clients wanted to make.

The second point specifically deals with some of the sections that I wanted to raise to the attention of the committee. I did not include a copy of the bill in my material, but I have a loose copy that I was able to obtain. In paragraph 5 of subsection 21(1)—if you have the standard one that was printed from the Web site, I believe it is found at pages 17 and 18. It's the second section dealing with this act. We have a concern with respect to paragraphs 4 and 5 of subsection 21(1).

As described in the preamble to the act, these are the sections which seek to amend the act so that any interlocutory order which is to be made at the interim preservation stage, before any proceeding for forfeiture occurs or is even commenced under the act, at the interlocutory order, these sections authorize not only the preservation, which is what the act as it currently stands allows, but the management, disposition and sale of property at the interlocutory stage and, in addition, empowers the Attorney General to seek orders from the court that if they are able to sell or dispose of the property at that interlocutory stage, they can pay themselves for the costs incurred in obtaining that order.

1110

In my presentation, I have attached at tab 2 a copy of the class action. I need not go through it today because it is more or less an efficient summary of the positions raised by my clients as to what is wrong with the act as it stands.

At tabs 3 and 4, though, I've included for the benefit of the committee, corresponding with paragraph 21(1)4, some present law dealing with what it means when the act seeks to sell or dispose of property that is perishable or rapidly depreciating in nature. That's not a foreign concept to the law of Ontario at least, as there is precedent under the current rules of procedure to seek that type of order. The problem is that the case law has determined that perishable or rapidly depreciating goods are really restricted to livestock, strawberries, those types of things, where the value is depreciating by the hour potentially.

But the next section, paragraph 5 of section 21, doesn't mention anything about "perishable" or "depreciating in nature." It is a wide net cast that says they can seek "an order to sever" any property or sell or dispose of any property at the interlocutory stage prior to commencing an application for forfeiture and seek payment of its cost reimbursement for doing so.

It is our position that such power runs completely contrary to the principle of fundamental natural justice and due process that spawns the age-old maxim that there is no such thing as pre-judgment execution, and in our submission, that's what this section is. You're empowering the Attorney General, who has no title to the goods in question that have been seized right now—none whatsoever. Until a forfeiture order is made, which would be the equivalent of a judgment in this proceeding, they have no title, but you're allowing them, ahead of that, to seize it, sell it, pay themselves, and then see what happens at the forfeiture stage. That can't be.

To boot, at tab 5 of my material, when the constitutional challenge was brought before Mr. Justice Loukidelis, the Attorney General of Ontario submitted voluminous material in response, one of which was the affidavit of one Jamieson Halfnight. This is part of the

public record, and I've reproduced it here at tab 5. The affidavit of Mr. Halfnight, a very experienced insurance litigator—it's paragraph 16, at page 5, if you're looking at the page numbers at the bottom. This is the expert witness retained by the Attorney General of Ontario to respond to our constitutional challenge, who states under oath, without being cross-examined, "It is an established principle of our Anglo-Canadian system of civil litigation between private parties that execution against a defendant is not available to a plaintiff prior to judgment." He mentions the very limited exceptions, which have no bearing here, one being what's called a Mareva injunction and one being what's called an Anton Piller order, which allows the court, prior to judgment, to seize and freeze certain assets of a defendant if the court is satisfied of a very stringent test.

Mr. Kormos: Where are those paragraphs?

Mr. Diamond: Dealing with the Mareva injunction? Starting at paragraph 33, Mr. Halfnight sets out some of the pre-judgment remedies that have been developed in the Canadian and Ontario jurisprudence that allow exceptions, very limited in scope and very difficult to obtain, to the maxim that you cannot obtain pre-judgment execution. The first two, being the Mareva injunction and the Anton Piller, are elaborated on as you go through the affidavit.

Mr. Kormos: Mareva is very difficult to obtain?

Mr. Diamond: Both are very difficult to obtain, very difficult. In fact, Mr. Halfnight swears to that effect in his affidavit.

Mr. Kormos: Do you agree?

Mr. Diamond: There's nothing to agree. That's the law, really. It's not for me to agree. That's the case law that has been developed.

If you look at paragraph 35, he states the conditions or circumstances under which such an order can be obtained, which is rare. You have to have a mountain of evidence, among other things, to convince the court to grant it.

Here in the Bill 128 proposal, you are, because of subsection (2), effectively saying that if the court is satisfied that there are reasonable grounds to believe that property as proceeds of unlawful activity is present, then the court shall make that order, except where it would be not clearly in the interests of justice.

It's a very narrow discretion the court would have in this situation, and what you're mandating the court to do in this situation is effectively to allow the Attorney General of Ontario to obtain execution of its costs before they have even obtained an order that they're entitled to the property in question.

Flowing from that, which we raise at item 3 in the overview list at tab 1, is that the structure of the bill and the amendments right now are completely deficient and silent to address the exact problem that I'm raising will happen. What happens if the Attorney General of Ontario does this—seizes something, disposes of it, pays itself—and then loses the forfeiture order? These amendments are drafted almost on the assumption on their face that the Attorney General of Ontario will succeed in every application, and that does not happen.

There is nothing in this bill to address what happens in this very real possible situation that the ultimate forfeiture order is denied and the application is dismissed. Then you have an individual whose property was seized, sold and reduced, and what happens next? That's a true shortcoming, which is born of the problems inherent with the sections I was referring to.

Lastly, as counsel for a class action, my clients cannot understand how these enlarged confiscation powers, as we call them—not forfeiture powers, but confiscation powers—seek to address the stated purpose of the act, which, I remind the committee, is "to compensate persons who suffer pecuniary or non-pecuniary losses as a result of unlawful activities." How does selling somebody's property and paying the Attorney General of Ontario—and I may add, it says "all or part of the property," so the property could be gone, disposed of, sold and completely paid to the Attorney General of Ontario. How does that seek to further the purpose to compensate people who have suffered losses as a result of unlawful activity? In my submission, it does not and cannot.

I thank you.

The Chair: Thank you, Mr. Diamond. An efficient one minute per party. Mr. Kormos.

Mr. Kormos: I'm interested in this action, because, as you know, some of us expressed concern about the civil remedies act being ultra vires—

Mr. Diamond: Mr. Kormos, I can tell you that the concerns you raised at the debate stage were echoed during the constitutional challenge and in the class action.

Mr. Kormos: You've got two clients who had, among other things, cash seized. The government has de facto possession, and that goes a long way toward securing any potential interest that they might have in terms of it being dissipated, doesn't it?

Mr. Diamond: In the old act, what would happen was that if the arm of the government, be it the police or whoever ended up taking the items—in the case of Mr. Tong, who was the one representative plaintiff whose items were actually forfeited to the government, it was taken. What happens normally is that a very quick application for an interim preservation order occurs, commenced by the Attorney General, even before the application for forfeiture is started.

The Chair: Fifteen seconds, Mr. Diamond.

Mr. Diamond: So they have de facto possession per se, but they need the rubber-stamp of the preservation order to keep it, and that's why it's done very fast. Apart from the constitutional issues that you raised yourself and that I've raised in the challenge, that section as it stands now, not subject to the amendments, I don't think we have a problem with, in terms of it being contrary to due process.

The Chair: To the government side.

Mrs. Sandals: We will make sure these documents are forwarded to legislative counsel and to the ministry's counsel. Thank you.

Mr. Diamond: Thank you.

The Chair: Mr. Dunlop?

Mr. Dunlop: I have no comments on it.

The Chair: Thanks to you then, Mr. Diamond, for your deputation.

1120

CITY OF TORONTO

The Chair: I now invite on behalf of the city of Toronto Mr. Edward Earle, solicitor. Mr. Earle, I remind you that you have approximately 15 minutes in which to address us. Please begin.

Mr. Edward Earle: Thank you, Mr. Chair. With your indulgence, the next speaker on your list is Pam Coburn, the general manager of municipal licensing and standards for the city, and we would propose to combine our time. It makes a lot more sense, actually, for her to speak first.

The Chair: Do I have consent from the committee for that? Agreed. Please go ahead.

Ms. Pam Coburn: Good morning, Mr. Chair, and thank you very much for the invitation and the opportunity to speak before you today. Just by way of introduction, my name is Pam Coburn. I'm the general manager of licensing and standards in the city of Toronto, and I'm also responsible as the lead agency in the development of the municipal response protocol that has been developed to deal with marijuana grow-ops and drug labs in the city of Toronto. My colleague, Ward Earle, a solicitor with the city of Toronto, has worked very closely with us to guide us through the use of the current legislation and also in this more recent process of helping us understand the bill before you and will have submissions to make as well.

I wanted to use this time this morning to share with you the experience of the municipal officials in dealing with the problems we've discovered flowing from grow operations and drug labs in our community. We don't have recommendations to resolve all the problems, but we do believe it will be helpful to share our experience with you. We have some specific advice in response with respect to the legislation in front of you and some ideas as to how it might be improved.

I'd like to review what our experience has been, discuss a little the impact on communities that we've experienced, some of the successes we've had in developing our protocol, which has actually been in development since 2003, the procedures we follow in exercising that protocol, some of the specific areas where we lack the tools, and then would make recommendations with respect to the bill in front of you.

I'd like to reinforce what has been said by the many people who have appeared before you this morning. We certainly support the efforts of the province in coming forward with a bill to address this issue. As I said, we began our efforts in this respect in December 2003 at the direction of our city council. I do represent the lead agency. To tie into some of the questions and discussions earlier today, it's very clear in our protocol that we follow the police investigation. That investigation must be complete and concluded and their warrants executed before our protocol comes into action.

A little bit about exactly what the problem looks like in the city of Toronto right now: We've certainly seen an incredibly thriving industry in this area, in the city, growing from 140 cases in 2003 to more than double, 320 cases, in 2004. The tracking at this point, assuming it doesn't continue to accelerate, will certainly exceed 400 grow operations in the city of Toronto alone in this calendar year.

I've broken down some of the statistics for you with respect to what we've seen just in this past quarter of 2005. Most of the uses you see occur in residential premises. One of the concerns that has been expressed, or at least there's speculation around the table by my colleagues, is that we're seeing this move to residential premises because the rights of entry are much more restrictive for a range of city officials, including police.

The impact on communities is wide-ranging, I would suggest to you: health and safety hazards relating to the construction of electrical bypasses, alterations to the building itself, the structure and the mechanical and electrical systems in the building, as well as deterioration when these types of grow-ops and drug labs operate for long periods of time. These are obviously things that the community is exposed to, but also municipal staff, including the police, electrical authorities, health inspectors, fire inspectors, building inspectors and bylaw enforcement inspectors, all of whom, at some point or other, may use their authority to help remedy the range of various problems that present themselves in these cases.

In terms of community safety, we're very much reminded, when we go into public meetings, that local communities are very concerned about what municipal officials are doing about this and that we have a protocol that works well, is tight and responds quickly to the problems as they present themselves. In the longer term—and this really speaks to the issue where we have less direction, I guess—we have begun to see that there are numbers of properties and communities that have been used for grow-ops and remain closed and boarded, and those properties just sit. We're not entirely sure what will happen to those in the long term, but as those numbers of properties continue to accumulate in pockets of communities around the city, we're concerned about property values and how the community functions in that kind of environment.

To speak to our successes in developing a protocol, we began developing this in late 2003 with the support of the police. They were concerned about their ability to share information with us relative to their investigations. Certainly their primary concern was not to compromise the criminal investigations that were obviously underway at that point. We came to an agreement in October 2004 that once they had executed their warrants, once they had undertaken any search and seizure on the property that was necessary, they would notify, through my offices, city of Toronto municipal officials as to the fact that they

had undertaken the bust of a grow-op or a drug lab, and that our protocol then would begin to function.

The municipal officials who sit around that table are comprised of police, of course, fire officials, hydro, the Electrical Safety Authority, a representative of the medical officer of health, a chief building official, Toronto water and waste water and municipal licensing and standards, and then of course the legal department.

Our protocol again follows on the conclusion of the criminal investigation by the police. What we found is that each one of these cases may present a very different set of facts and circumstances on the ground. The property may be residential use or intended for residential use or commercial use. It may be occupied at the time of the grow-op. It may continue to be occupied after the bust. All of those things need to be taken into account, particularly the length of time the illegal activity has gone on and the amount of alteration or deterioration in the premises. All of those things are considered by the various officials in terms of determining what actions need to ensue.

Our protocol contemplates a 24-hour response time from the time we're given notice by the police. That initial response is to ensure that the premises is secured and that it's not open and available to the public, if in fact it's not remaining to be occupied at that point. We rely on the evidence of the police as to the existence of the grow operation. They have information that they provide to us that will describe to us—I guess I would say in layperson's terms, being that a police officer is not necessarily an expert on health, mould or structural matters—what they've seen in the premises. We rely on that information to issue orders under the current authorities existing in the Building Code Act to require that orders be provided to identify the conditions of the building with respect to structural, electrical and environmental contaminants or concerns. We will then further order, once we've received those engineering reports, remedial actions as they're necessary and appropriate. The remedies are again discussed among the health and fire and building officials right across the municipality. Those orders are then registered on title.

As I said, we assess the engineer's reports and we may request additional information or we may issue orders directing that remedial action be taken as a result of that information that's provided. We have just begun to move into a phase where we are prosecuting for failure to comply with the municipal orders that direct that engineering reports be provided. I'm not in a position to share anything with you at this point as to what the courts will do as we move into this phase, but it's our intention to pursue this aggressively.

Some of the areas where we lack the proper tools: There are delays in registering orders on title. This speaks to the issue, I think, of public notification and the potential for the sale of the property. The current provisions of the Building Code Act provide for a period of time pending an appeal and then potentially long delays after that, should an appeal occur.

1130

We also feel that, in these cases, owners and agents of owners, like realty agents, as well as property managers, should be under some positive obligation to disclose when there are orders pending that have not been resolved. Those would flow as well in the circumstances where someone might be looking to move a tenant into a premises that hadn't yet been remediated.

We believe, in these cases, that there should be authority to actually prohibit the occupancy where there is reason to believe there is an unsafe condition, pending resolution of those matters.

We also feel there should be both authority and priority to municipalities to recover the costs associated with enforcement. Clearly, enforcement in this case extends beyond the police to the municipality in terms of execution of remedial measures. In fact, under the current powers, if the municipality receives information as to the nature of the deficiencies, we can move forward to undertake those remedial actions and apply the costs of those on to the taxes for recovery. But of course, whether or not they are in fact recovered is something that we'll know further in the long term.

We also recommend, as does my colleague in the city of Toronto representing large municipalities' chief building officials, recognizing the implicit dangers to our staff in going into these premises. We believe the current authority that allows us to direct the owner of the property to bring competent officials into the building to undertake analysis of mould and structural deficiencies—it should be their responsibility, and then we work with those property owners as best we can to get them resolved and only step in and take more control over the property when that's absolutely necessary.

We recommend that there be flexibility in the legislation in order that whether it's the medical officer of health or there has been a contamination of the water/waste water system as a result of the operation, that all of those officials might arguably play a role, based on the circumstances that present themselves.

Again, I think it's appropriate to include a power to prohibit the occupancy until we know the premises has been remediated, with the ability to recover municipal costs.

If I can summarize before I turn it over to my colleague, who has some specific recommendations around the amendment of the legislation, we absolutely support the development of the legislation and the exercise that you're involved in right now. We feel the legislation should be expanded to deal with illegal drug labs as well as grow operations. We would ask that you recognize that these are sophisticated matters and costly to enforce and they actually are more effectively dealt with by using the resources of health and other officials as well.

We would also suggest, flowing from that, that the authorities might extend into the Health Protection and Promotion Act, for example, in terms of remedial powers, and that there be an expedient process to allow for public notification by early registration of these out-

standing orders on title, as well as a positive obligation being placed on owners and their agents when they're in the process of either selling or renting the properties when they have not been remediated.

Mr. Earle: You have a document in front of you called Suggested Legislative Amendments, which I've authored. That's an attempt to express in concrete form the concerns that Pam has outlined for you. Happily, I think it also to some extent encapsulates the concerns you've heard from the other speakers today.

Basically, you have three main areas. You have concern over enforcement powers, concern over cost recovery, and the issue of protection of the public, both by imposing positive due diligence requirements on the owners of property and providing means of giving notification to an unsuspecting public that a property has previously been a marijuana grow-op location.

In terms of the inspection power issue, your bill focuses on the Building Code Act, so we are also focusing on the Building Code Act in the main. You've already heard about the concerns with the new subsection 15(1.1), that we think it should be more flexible in terms of a discretion to inspect, a discretion in terms of the contact person for the police. We would also add that we don't want to be too narrow in terms of allowing the municipality to act proactively. We'd like the ability, independent of being told by the police that there's a marijuana grow operation, to acquire that information ourselves and act where a premises has been used that way, is being used that way or will be used that way, because there can be situations where information comes to our attention.

Health and safety concerns have already been mentioned. We would like some reference in the legislation that inspections would take place where it's safe to do so.

The need for a warrant: It's a hot-button issue, but in the city of Toronto, in the first quarter of this year, the police busted 83 premises. Those were the ones they were aware of. They will tell you themselves that their best estimate is that they're aware of 10% to 50% of the ones that are out there. Look at the statistics in Pam's document and you'll see that, of the 83, only four were commercial premises. We're not really dealing with the Barrie Molson brewery plant so much; we're more involved in residential situations where you have residential neighbourhoods being home to these operations. So what we are proposing is that there be some provision for a warrantless search in these circumstances.

The use of force is also an issue for us, inasmuch as the Building Code Act does not expressly address the use of force in any circumstance, that I can tell. It certainly should be addressed in this circumstance, given that our inspectors may be going out to a premise that has been investigated by the police, locked up and secured and left, and there's nobody there. So how do we get in? We want to be in compliance with the law when we undertake these types of activities.

In terms of cost recovery, there's been discussion before you about the BC legislation. The city of Surrey has a bylaw, which is a very straightforward bylaw, which basically allows for cost recovery whenever remedial action is taken. So we're proposing the same type of amendment to the Municipal Act. Currently, section 427 of the Municipal Act allows a municipality to take remedial action, cover the costs incurred by it, place it as a lien on taxes. We would suggest the same type of language in respect of enforcement costs. We're talking about the whole range of enforcement costs: investigation, identification, entry, securing, remediation, repair and maintenance, not only by the city, but also by health, police, fire and, we think, the electrical utility as well.

I also have some reference in here to the other potential sources of funding from ill-gotten gains, if you will. The Crown Attorneys Act and the Remedies for Organized Crime and Other Unlawful Activities Act, which you are proposing to amend—I think we appreciate that while we are on a list to receive those proceeds, we're fairly well down that list. If there were an opportunity to consider moving us up or finding some other way, perhaps in the case of particular marijuana grow-op situations, where, if real property is being seized and forfeited and liquidated and there are proceeds available, that some of that come back to the municipality to compensate us for our enforcement costs.

Finally, the protection of the public portion: What I'm proposing is a section added to the Municipal Act, which would do three things.

It would require landlords and owners of property to exercise due diligence in a reasonable way with respect to properties that they are renting to ensure they're not being used for illegal activities.

There should be a positive obligation placed on owners and their representatives when they're selling property to disclose any contraventions of bylaws or legislation that have flowed from a marijuana grow-op situation. This is not an entirely original idea. I think there's a private member's bill right now that's sitting on your docket, Bill 181, which has a provision in there that does address this type of issue as well.

Finally, there's the notification of the public. Where orders are registered on title under the Building Code Act or where we have the ability to effectively prevent occupancy of a premise until deficiencies have been remedied, notification or the establishment of a registry might be more of an issue, but it's a bit of a trade-off. If that doesn't happen, the establishment of a registry where we could publicly list properties, indicate they were used as a marijuana grow-op, give the address, list the contraventions, would be quite useful to us.

I think that's basically my summary, Mr. Chairman, and I'll submit to any questions you may have.

1140

The Chair: Thank you, Mr. Earle and Ms. Coburn. We have about three minutes per party. We'll start with the government side, Mr. Delaney.

Mr. Delaney: One short question: With regard to the obligations of landlords, what do you suggest as due diligence?

Mr. Earle: I think one of the suggestions that was made earlier was a good one from the chiefs of police association, which was to have a reasonable inspection requirement subject to the rights of tenants.

Mr. Delaney: And after the property has been occupied?

Mr. Earle: That would be the situation. You have tenants in the premises and the landlord would conduct reasonable inspections subject to their rights.

Mr. Delaney: Do they not now have that right?

Mr. Earle: They do, but I guess what we're proposing is that there would be a separate obligation to exercise that right in the public interest and that failure to do so would be a provincial offence.

Mr. Delaney: Thank you.

The Chair: Any further questions from the government side?

Mrs. Sandals: I just wanted to ask, if I'm looking at page 2, section 2(a) of your submission, which is "More Flexibility," you seem to be suggesting in there that in fact you want the ability to enter premises prior to the police investigating and securing the premises, which seems to be contradictory to some of the other comments we've heard, that people are concerned that the police enter and secure the premises and that the municipal inspection would come along after that. This seems to be something that is somewhat different than we've heard from other speakers. Would you comment on the notion that you would be able to enter before the police have actually identified that it's a grow-op?

Mr. Earle: I think that any protocol respecting entry would be subject to common sense, which is that we're not going to put our people in harm's way. I think the point here is more that we have the ability under this provision to act where we've obtained information independently of the police, as opposed to solely through their notification.

Mrs. Sandals: Thank you.

The Chair: We'll turn to the Tory caucus. Mr. Dunlop.

Mr. Dunlop: I'd like to thank you both for coming and sharing your time together. What I'm getting from your overall summary is that on this document, the one by Ms. Coburn, you're actually looking at three possible areas of amendments that you'd like to see made to the legislation, being on the back page. I thought I heard you agree that we should also include other drug labs, as well as just the marijuana grow-ops. Am I correct on that?

Ms. Coburn: Yes, sir, absolutely.

Mr. Dunlop: So you're actually suggesting four possible amendments to the legislation: the three that you've got outlined, plus the fourth one?

Ms. Coburn: Yes.

Mr. Dunlop: I think that's all I really wanted to say, other than the fact that I did want you to maybe elaborate a little more on the health and safety aspect, just a comment more than anything else. I talked to some police officers who were actually involved in the commercial grow-op at the Molson plant in Barrie.

Mr. Kormos: An historic grow-op; a great Canadian grow-op.

Mr. Dunlop: Yes, the great Canadian grow-op.

I understand it is a scary situation when you enter a facility like that. Whether it's a building inspector, a hydro inspector or a police officer, there are a lot of areas of safety to the workers or to the employees in that area. I'm glad to see that you've included that as well.

The Chair: Mr. Kormos.

Mr. Kormos: I appreciate your participation, because yours is, may I say it, coming from the horse's mouth. These are the people who are being called upon to perform the new roles that are prescribed by the legislation. This is a huge, huge uncontrolled economy, clearly. I mean, tonnes of this stuff is being grown, and not just in Toronto. It's amazing that the police are busting—you said 83 in the last year?

Ms. Coburn: In the first quarter of 2005.

Mr. Kormos: So you've got tonnes of the stuff being seized. It's a huge, uncontrolled, untaxed economy. Maybe if we started by taxing rolling papers we'd make some headway. Think about it. Every corner store I'm in, there's a huge display of rolling papers but there's no Daily Mail tobacco for sale any more behind the counter. I just don't get it. Clearly somebody is ingesting this stuff, right?

Look, the whole issue around building inspectors—because I read the preliminary findings of the protocol development that refer to how the first responder in all cases will be Toronto Police Services, and it suggests that the local hydro utility already has the power to disconnect an illegally connected service. Is that accurate? Am I correct on that?

Ms. Coburn: The police have been concerned that there are quite a number of these premises that have actually been wired and rewired. There are booby traps—doorknobs and window screens and the like. Given the fact that the electrical bypass often taps into the main line at the street—presumably that work hasn't been undertaken by a properly trained official, one would assume—when they have a warrant to execute, the police will contact the electrical authority, at least in the city of Toronto, and they will come and cut off the service at the street. So that will avoid those kinds of problems without people having to enter into the premises.

Mr. Earle: I'm quoting the minister here, I think, but my understanding is they currently shut off the power pursuant to an Ontario Energy Board order or policy, as opposed to actual legislation, which is what is proposed now.

Mr. Kormos: OK, and that's fair enough. Again, you folks aren't concerned about some aging, greying Jerry Garcia fan who is growing one plant in his or her sunroom, are you?

Ms. Coburn: We would respond when the police have concluded in a criminal investigation that there is a grow-op. As you pointed out earlier today, I think, it has not been defined, but we do deal with undertaking remedial work in properties for a variety of reasons, which

is why we're asking for the flexibility to do what we know how to do, and if we find that there are unsuspecting people involved, there are other remedies at our disposal as a community.

Mr. Kormos: But again, to be fair, you're not interested in these de minimus situations. That's not what your focus is, is it?

Ms. Coburn: It certainly hasn't been our experience in the exercise of the protocol to this point, no.

Mr. Kormos: You heard my concern about the literal wording of (1.1), where it makes it mandatory that a building inspector utilize his or her warrant list power to enter when notified by the police that the building contains a marijuana grow-op. Do you share any of my concern? It's one thing to say, "That's not what's intended," but I'm worried about the wording of the section. Do you share my concern? Notification means—well, it means notification. You folks know what it takes to get a warrant, for instance. You know how much evidence you've got to have for a JP, if only you had JPs, because I've heard the dilemma the city of Toronto is in because the government won't appoint JPs. But that's a separate issue, isn't it?

Do you share any of my concerns about the literal wording of this section that requires a building inspector to enter? Because that could mean entry before the police have—I appreciate you're saying you want some of the ability to conduct your building inspection powers, but surely there's got to be some discretion here on the part of the building inspector. We want a building inspector to say, "Not a snowball's chance in hell am I going in there until the police or the fire services have been in." Isn't that fair, to give the building inspector that discretion?

Ms. Coburn: I think it actually speaks to the very point we're making about having the appropriate officials involved at the right time. It has been a part of our protocol from time to time, and I think this may have been what Ward was alluding to earlier—from time to time, we will hear from communities that they are concerned about a grow operation. We're in touch with the local police, and they will tell us, "We have this premises under surveillance; there's an ongoing investigation. Our preference would be that you keep your officers away," and we're absolutely happy to comply.

The Chair: Thank you, Ms. Coburn and Mr. Earle from the city of Toronto, municipal licensing and standards.

I advise committee members that this committee stands adjourned—

Mr. Kormos: One moment, Chair. Think about it, to the government members: If you taxed rolling papers, you could call it the Zig-Zag tax and get huge new revenues from this previously untaxed economy.

The Chair: Thank you, Mr. Kormos. I'm advised that is not a point of order, however insightful.

This committee stands adjourned until Thursday, May 5, at 10 a.m.

The committee adjourned at 1150.

CONTENTS

Wednesday 4 May 2005

JP-28

ISSN 1710-9442

Legislative Assembly of Ontario

First Session, 38th Parliament

Assemblée législative de l'Ontario

Première session, 38e législature

Official Report of Debates (Hansard)

Thursday 5 May 2005

Journal des débats (Hansard)

Jeudi 5 mai 2005

Standing committee on justice policy

Law Enforcement and Forfeited Property Management Statute Law Amendment Act, 2005

Comité permanent de la justice

Loi de 2005 modifiant des lois en ce qui concerne l'exécution de la loi et l'administration des biens confisqués

Chair: Shafiq Qaadri
Clerk: Katch Koch

Président : Shafiq Qaadri
Greffier : Katch Koch

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 5 May 2005

Jeudi 5 mai 2005

The committee met at 1001 in room 228.

LAW ENFORCEMENT AND FORFEITED PROPERTY MANAGEMENT STATUTE LAW AMENDMENT ACT, 2005

LOI DE 2005 MODIFIANT DES LOIS EN CE QUI CONCERNE L'EXÉCUTION DE LA LOI ET L'ADMINISTRATION DES BIENS CONFISQUÉS

Consideration of Bill 128, An Act to amend various Acts with respect to enforcement powers, penalties and the management of property forfeited, or that may be forfeited, to the Crown in right of Ontario as a result of organized crime, marijuana growing and other unlawful activities / Projet de loi 128, Loi modifiant diverses lois en ce qui concerne les pouvoirs d'exécution, les pénalités et l'administration des biens confisqués ou pouvant être confisqués au profit de la Couronne du chef de l'Ontario par suite d'activités de crime organisé et de culture de marijuana ainsi que d'autres activités illégales.

LEACOCK COMMUNITY ASSOCIATION

The Chair (Mr. Shafiq Qaadri): Good morning, ladies and gentlemen. I call the meeting to order. This is the standing committee on justice policy. We're here for public hearings on Bill 128, An Act to amend various Acts with respect to enforcement powers, penalties and the management of property forfeited, or that may be forfeited, to the Crown in right of Ontario as a result of organized crime, marijuana growing and other unlawful activities.

We have a number of presenters. Already seated, we have Murray Hedges, vice-president, and Bob Cook, member at large of Leacock Community Association. Gentlemen, I remind you that you have 15 minutes in which to present. Any time remaining afterward will be divided evenly among the parties. Please begin.

Mr. Murray Hedges: My name is Murray Hedges and I'm the vice-president of the Leacock Community Association. I've attended 10 grow-op meetings. I've met with councillors, MPs, MPPs—Gerry Phillips in particular—police inspectors, and Monte Kwinter at one meeting.

We represent a small community within ward 40. We consist of approximately 12 streets and we have 11 grow houses. We're working on another grow house to make it an even one-for-one.

Mr. Peter Kormos (Niagara Centre): You have 11 grow houses?

Mr. Hedges: Eleven grow houses on 12 streets; not evenly spread, by the way.

The Leacock Community Association is pleased to have the opportunity to bring to this committee a written submission of our concerns. We speak on behalf of our own community association, the concerns expressed by other communities and the frustration voiced at meetings by those officially involved in trying to control illegal grow-ops.

We support the initiatives of Bill 128 but feel that it doesn't go far enough to have much effect on the spread of grow-ops. We would also like to express our disappointment that there's been no opportunity for community input to the Green Tide group or the Bill 128 committee prior to this time.

The rebirth of community organizations: The proliferation of illegal grow-ops and the apparent inability at all levels of governments to stem this outbreak of crime that has spread unchecked across our country are a major concern to many communities. Community organizations such as ours that have laid dormant for many years have come to life. Street meetings, community meetings and town hall meetings, with standing room only, demonstrate the seriousness with which the public is taking this issue. Large inter-community networks are being organized.

A study of Toronto grow-ops showed that Scarborough 41 and 42 police divisions account for almost 50% of the city's total.

Our fears and concerns: Criminal elements freely operate in our communities. Our hard-core fears include the destruction of homes by fire, the pollution and poisoning of our air, the potential for electrical shock from illegal hydro hook-ups, and criminal activities such as home invasions and the placement of booby traps. Some of what might be considered softer effects, but still important to our communities, are the tax dollars required to close down these operations with apparent little cost recovery, the loss of hydro revenues, the decline in property values and the exodus of good citizens discouraged by the impunity with which these grow-ops flourish.

Protection for the community: Bill 128 needs to be strengthened to be effective. We must be protected from

the growth of this illegal industry. At meetings it has been pointed out time and time again that there seems to be far more concern for the bad guys than the good, law-abiding citizens. We need and deserve action for our protection. We need legislation where penalties on conviction are a real deterrent. If the punishment for a crime is worth the risk, then we have a problem. Destroying our communities must be made costly to those involved.

Recommendations: (1) That all property—buildings, equipment, vehicles and bank accounts—of those convicted of grow-op operations be seized and the proceeds placed in a dedicated account for the exclusive use of further grow-op closures. This money should be spent locally to provide an incentive for further action; (2) That a substantial amount of provincial funding be provided immediately for illegal grow-op identification and removal; (3) That substantial minimum jail times be established and applied, with no early paroles, and severe financial penalties be imposed; (4) That government forces and other agencies involved be expanded to a magnitude sufficient to deal with the grow-op problem, especially in areas where grow-ops are most plentiful; (5) The procedures surrounding the issuance of search warrants on suspected grow-ops need to be reviewed to ensure they provide for speedy and efficient action; (6) Those knowingly aiding grow-ops or withholding information about grow-ops are part of the problem. Appropriate penalties need to be considered; (7) That all buildings used as grow-ops should have that information permanently registered on land title. Why hide this fact?

Conclusions: We need our elected officials at all levels of government, such as our mayor, our Premier and our Prime Minister, to speak out and get actively involved in this fight. If not controlled now, this North American epidemic will haunt us forever. There has been a great deal of money and effort put into educating the public on how to spot and report grow-ops by some proactive politicians and various interested agencies. Good for them. The response has been rewarding. We are at the point now where more detection and awareness education without the support of the courts is only smoke and mirrors. Please, do not let the system fail us. Thank you.

The Chair: Have you concluded? I'm sorry, will your confederate also be presenting?

Mr. Hedges: No, that's it

The Chair: Thank you very much for your presentation. We'll now have ample time to be distributed evenly, and we'll start with you, Mr. Klees.

Mr. Frank Klees (Oak Ridges): Thank you very much for your presentation. I assume you've been following the debate on this bill in the Legislature. You've probably seen Hansard.

Mr. Hedges: Bits and pieces, yes.

Mr. Klees: As you've observed members of the Legislature speak to this bill, what is your conclusion in terms of the seriousness with which the government is addressing this and members of the Legislature are dealing with this?

Mr. Hedges: I guess my gut feeling is that I think those people should have been at these 10 meetings; that they would have a better feeling for exactly what's going on in the communities. The first two or three meetings I went to I got a certain feeling, but then, as time went on, I started to see more and more and I thought, this isn't isolated, this is pretty general, and the feelings are very strong.

The government has a job to do. You have things to deal with that I'm not addressing in here, which are the mechanics. I can only talk from a community point of view and the gut feeling of the public in general. To relate that to what goes on in government circles is not easy for me to do. I'm not a legal mind, nor do I have that opportunity.

1010

Mr. Klees: The reason I ask that question is that one of the questions we've been asking the minister—I have commended the minister for coming forward with a framework of legislation here; at least the government is recognizing there is a problem. What is missing is an apparent commitment of resources. It's one thing to create legislation; it's another thing to demonstrate that the government is serious about this by committing the financial resources, and also, on the other hand, the penalties and consequences for not complying with the law.

We've been doing our best to impress on this government the need to match their talk with some walk, in terms of financial resources. I think that's what I'm hearing you say.

Mr. Hedges: I understand your position, and I appreciate it. But again, we've got to deal with the people in power. They're the ones we're approaching now. We've asked for resources and money. I think that's there.

Mr. Klees: We've been wrestling with the issue. On the one hand, we have governments saying that marijuana use is OK. For example, if you check the Hansard record of debate here, there are some members who have gone out of their way to even give recipes for how you can incorporate marijuana in desserts, if you will; I won't go into any more detail. It's difficult, on one hand, to be serious about punishing people and taking seriously this issue of marijuana grow-ops when, at the same time, we have legislators making light of using marijuana.

Mr. Hedges: We feel they are two entirely different issues. The use of marijuana is one issue. The issue we're dealing with is the criminal elements in our community. That's our point here today.

Mr. Klees: So your organization has no problem with the decriminalization of marijuana?

Mr. Hedges: I wouldn't say that, but that is not the issue today.

The Chair: Thank you, Mr. Klees. We'll move to the NDP.

Mr. Kormos: Thank you, gentlemen. Your comments were, in my view, astute. Are these grow-ops ones that have been busted yet?

Mr. Hedges: Yes.

Mr. Kormos: How commonplace was the knowledge about these grow-ops before they got busted?

Mr. Hedges: Not as common as it is today, by a long shot.

Mr. Kormos: OK. The sense I'm getting—it's hard to keep a secret. I don't care whether it's big-city Ontario or down where I come from, Welland.

Mr. Hedges: My son worked at CHOW.

Mr. Kormos: All right. Very good. It becomes pretty obvious in short order: We're told that when the snow is melting off the roof because of the heat, when other people's roofs are covered with snow; again, the no matter of no garbage, the house obviously not being used for residential purposes. Also, there's the mere fact that even criminals talk; it's the irresistible impulse to talk.

Yet this is one of the problems: Bruce Miller from the Police Association of Ontario was here yesterday, effectively saying that the police have got the tools, if you will, to identify these places. They can use that thermal imaging on airplanes—

Mr. Hedges: And they have mobile stuff as well.

Mr. Kormos: —but they haven't got enough police officers.

I used to practise criminal law, which is a pretty good background for getting into politics especially for criminals, and especially nowadays.

Mrs. Liz Sandals (Guelph–Wellington): Can we quote you on that?

Mr. Kormos: By all means. As a matter of fact, there are some Liberals who may need a criminal lawyer in short order, after Gomery is finished with them.

Interjection.

Mr. Kormos: Don't speak too soon, Ms. Sandals; the inquiry isn't over.

Bruce Miller, whom I have regard for, says the problem is huge and—this is my experience—it's incredibly labour-intensive to investigate one of these places, then to raid it and then to prosecute it, because you don't want to just raid it, you want to put together a strong case. It's clear that communities, neighbours are prepared to—I think all of us get calls, when people identify a drug-trafficking house, for instance, and we relay that information on; I trust everybody does. But it's frustrating, because months go by and those people are still calling us, saying, "Nothing has happened yet. I called you with licence plate numbers. I called you with identities."

Mr. Hedges: That's exactly what we're doing.

Mr. Kormos: So tell me what happens.

Mr. Hedges: It can go on for a year. We've had it go on for even a year where people have been reporting. We've known of one, I think, for how long?

Mr. Charles Cook: A year.

Mr. Hedges: A year, and nothing has been done yet. The resources are not there. That's why we talk about financing and support for these groups.

Mr. Kormos: What do the police tell you? You call them or somebody calls them—

Mr. Hedges: Well, at the meetings they have spokesmen, and it's always the same story: They don't have the manpower.

Mr. Kormos: That's a problem.

The Chair: We'll now move to the government side.

Mrs. Sandals: Tell me where Leacock is.

Mr. Hedges: Our particular little area is bound by Sheppard on the south, Huntingwood Drive on the north, Birchmount on the east and Warden on the west.

Mrs. Sandals: So you're out there somewhere.

Mr. Hedges: Yes, we're out there in Scarborough–Agincourt.

Mrs. Sandals: OK. My Toronto geography east of Yonge Street is really bad, so I need help here.

Mr. Hedges: That's OK; I come from a farm too.

Mrs. Sandals: Just a couple of comments quickly. I'm sure you understand, because you've been at a lot of these meetings, that when we get into minimum penalties and those issues, that's federal responsibility.

Mr. Hedges: Yes, understood.

Mrs. Sandals: In fact, Minister Kwinter is on record as saying that we need some attention to having real penalties as a deterrent. Municipalities are responsible for policing, but just to share with you, we are pursuing an initiative to share the cost of policing for 1,000 new officers. One of the areas that's targeted in there is, in fact, policing for grow-ops. So hopefully we will be able to address your resource piece.

Let me go to something we actually may be more directly involved in in terms of this particular bill. Your recommendation 7 is: "That all buildings used as grow-ops have that information permanently registered on land title." I'm sure your intent there is that the next owner not come along and unknowingly purchase a problem.

Mr. Hedges: We know that real estate, for instance, are out telling people untruths, and we've had at least half a dozen cases of that. That's part of it. The other thing is that we've discovered that the only effective way to get rid of these viruses and moulds and whatnot is to encase the house and blast it with dry ice. That's the only effective way. We don't know what's going to happen to these houses in the long term. There could be mould and stuff in the crevices that they don't pick out at this point. So, down the road, who knows?

Mrs. Sandals: I think what's in the bill—and I would invite your comments on this—is that where a grow-op has been dismantled, we would require that the municipal building inspectors go in, look at the safety issues and issue orders so that building can be rehabilitated. So rather than leave it standing there with issues, in fact we make sure that building gets rehabilitated.

I understand from your comments that you're not happy about having all these somewhat derelict buildings on your—

The Chair: We'll have to leave it there, Ms. Sandals. I'd like to thank you, Mr. Hedges and Mr. Cook, on behalf of the Leacock Community Association.

CITY OF TORONTO

The Chair: I would now invite our next presenter, Mr. Michael Del Grande, councillor for the city of

Toronto. Mr. Del Grande, I remind you that you have 15 minutes in which to present to us. Please begin.

Mr. Michael Del Grande: Thank you very much, Mr. Chair and members of the committee. If the police are at the ground level with respect to this problem, I'm at the street level: first-hand knowledge, first-hand experience.

I never had to carry my marijuana binder for properties that have been busted. I've got about 60 here that are under suspicion. I've provided for the committee, in order to speed up the time, some of the tools that I feel the city of Toronto needs.

1020

Certainly with Bill 128 talking about the proceeds going to the province doesn't help the city very much when we talk about resourcing. They should be going back to the city police forces to undertake the activity. There is no established marijuana grow squad per se that's dedicated totally to marijuana grow-ops, because they're also involved in sexual assaults and gun calls. So there isn't a specific unit that does that.

Part of the other issue is that the intelligence isn't really going anywhere to determine the organized crime ring that's involved. A lot of farmers have been caught. We don't know who sponsored them. We can't connect the dots, from my vantage point. The police only let me know when there is a bust and how many plants, and I put out a release in the immediate neighbourhood to let people know. I sign the property. I stretch the tools we have in an ongoing battle.

What's frustrating for me is that when you get honest people saying, "You know what? The police aren't responding fast enough. At a thousand dollars a plant, maybe I'll put 10 or 20 on the window sill, because it's easy money," we have failed. When we have good people talking about joining the crime rather than preventing the crime, we have failed. The problem is, it's out of control. I have 170 streets. I've had 45 busts to date, which comprises about 26% of my streets, and they're basically just the tip of the iceberg.

There was some commentary about identifying etc. People are afraid, and justifiably so. I received death threats against my family, that there were contract hits against my children. I've used the comparison: Are we really that much different than Colombia, where we're talking about big money and the honest politicians are threatened and the not-so-honest politicians are bought? We think that's beyond us, but that's not very far. This is a very significant society problem. We have failed. I always like to say politicians are measured by the words and the speeches they make, but leaders are measured by their actions. We need a lot more leaders and we need a lot more leadership in this area.

I personally believe the crux of the matter is with the landlords. I think that's where a lot of focus needs to be done. Landlords do have the right under the Landlord and Tenant Act to go and inspect their properties. They just shouldn't be taking 12 cheques and saying, "Thank you very much." The bad guys know they shouldn't have any properties in their name. The home should be rented; the vehicles they use are leased. So when there is forfeiture, it's not their property that's being forfeited. That's a very significant situation.

To have 1,000 police officers at 50 cents to the dollar doesn't really say much to me, because I don't think anybody's taking up that offer. Toronto doesn't have the money to do that. I would rather see you put 500 police officers, at $1, dedicated to the labour-intensive work that's required by police forces in this area. At least that way we're doing something, but just to talk about 50-cent police officers, as far as I know, with our budgets etc. in the city of Toronto, just doesn't cut it.

I'll end it there and I'll be open for questions, which I think would be more productive.

The Chair: Thank you, Mr. Del Grande. We have about 10 minutes to distribute evenly, and we'll start with the NDP side.

Mr. Kormos: Thank you, sir. I'm interested in your reference, under ideas and recommendations, "Protect our officers' safety by not forcing municipalities to perform the inspections," because this started to come to the surface yesterday. We had folks here from Metro Toronto or the city of Toronto bylaws department, among others—lawyers—who made a very good presentation, a very thorough one, but who also, when I talked to them afterwards, indicated that they weren't part of the development of the bill, which was frustrating.

Mr. Del Grande: Correct.

Mr. Kormos: I think they could have provided insights in the first instance.

I'm looking at what will become subsection 1(1.1) of the Building Code Act, and that's "An inspector shall" perform a warrantless search of a property when "the chief building official has been notified by a police force," presumably not even the police force of that municipality necessarily, "that the building contains a marijuana grow-operation."

We've got professional firefighters making a presentation today. We had police telling us yesterday that they're concerned about not having the gloves, the boots, the coveralls, to go into a high-mould, high-toxic place, yet a building inspector "shall ... when notified by a police force"; in other words, without a warrant—and that's not the crux of it—but "shall." The police can go without a warrant, so they're using the building inspector like a canary in the mine. I'm concerned that that's mandatory rather than discretionary, because it seems to me the building inspector doesn't have the power to say, "Whoa, sorry guys, you bust that place first." I think that's what the intent probably is, but that's not what the statute says.

Mr. Del Grande: Stupidly enough, I've been in some of these grow-ops. I've been to one that had a major fire. That concerns a lot of people, because the amount of fire risk is much greater in these homes. The place does have a smell, a stringent odour to it etc. The mould is there. I had a report given to me by an outfit that did some preliminary work for the York police force about the types of toxic mould that are in there and it's not good

stuff. By the way, when this stuff is vented, it vents to the neighbours as well. So, you know, we talk about kids having asthma etc. I've been in situations where the houses have been painted over. A lot of new immigrants who come in, they pile them in here with young kids etc. There's an obligation to look after these people.

To me, when you see the police going in with their spacesuits, and now you want our guys to go in—is it really necessary for our guys to go in? The point is, the police have said that that's what it is, and they know. Do we have to say each time, "Well, our inspector needs to go in"? Can't we work co-operatively with other resources? If the police say, "This is a grow-op. There are 500 plants in here," we know what the consequences of that are. Why does the inspector have to go in? We should accept the police report at face value. It's a grow-op and it has these particular features. It has mould, it has electrical problems, it has this, it has that, etc. It's after the fact but, again, we need spacesuits for our guys as well.

The Chair: We'll now move to the government side.

Mrs. Sandals: Thank you, Mr. Del Grande. I want to follow up on the comments you just made, because I'm a bit mystified. If the outcome of all this is issuing an order which has to do with, I'm presuming, quite specific repairs that need to be made to a building, why would we think the police were qualified to make orders about requirements and repairs to electrical systems, how to repair structure, health requirements around ensuring that mould is no longer an issue? I'm wondering why the police, we would assume, would be qualified to make those judgments. I would have thought they would want the particular building officials inspecting the building and making those judgments.

Mr. Del Grande: Perhaps I wasn't clear enough. When one of these homes is busted, comparable to the other 45 that have been busted to date in my ward, we know there are marijuana plants. We know the structural changes they've made. They've broken into the concrete wall to get to the hydro. We know that walls have been built etc. We know the effect of the toxic mould that's in there. We know these things. What I'm saying is that we should take the position that when the police have said, "We've busted a home that has 500 plants," we know all the symptoms of that home, and all the homes they go after. We know that. We don't need to rediscover that. So what I'm saying is, if the police have said that they've busted a home with 500 plants, we know what the typical type of operation is. We know they've made structural changes; we know they've done all these things.

1030

If you want a building inspector to go in—I've used the tools and I've stretched the tools. I've taken the position and I've told our MLS people to put up a notice saying that there's an order on this building and that we expect an engineering and an environmental engineering study before we believe that this building is safe. We've put the onus on the homeowner. That's what we've done.

Now, because of the problems with this and that, we've changed the order so that there can be something registered on title, so that when a lawyer checks this property when somebody wants to buy it, they're going to be tipped off that they should look at what this order's about and what's going on here. That's the only thing that we've done; that's the only thing that I know that's been proactive.

I want to assure people that when they buy a house in ward 39, they're buying a property that they're alerted to. If the homeowner does those things and has all those studies—it's not cheap—which means they have to clean up that stuff, then the building inspector goes in to verify that the order has been completed.

Mr. Klees: With regard to the number of reports where there's a suspicion that there may be a grow-op, how long does it typically take from the time that is reported until that house or property is visited, to your knowledge?

Mr. Del Grande: Anywhere from three months to a year. We had one where the residents were really upset. We had a fire at 75 Rainier. It was reported in November. I went to talk to the people who were concerned about it. It was a house next door. It didn't have all the typical signs one would have, but it had some of the signs. We had 15 fire trucks respond to that house with all kinds of other resources, police etc. That happened, I think, at the end of January or the beginning of February. The fire occurred, but everybody started complaining, "We phoned the police in November. We're into February. Why didn't the police do anything about it?"

I try to explain to people that it's a question of resources. It's not that the police don't want to go; it's just that you join the pecking order. It's very time-consuming to get the warrant, to do the surveillance, to do all these types of things. It is manpower-intensive.

The sad problem is that for the bad guys, at the end of the day, it's a write-off. They don't go to jail; they don't pay any fines. No wonder this thing has mushroomed. There are no deterrents here.

Mr. Klees: Councillor, the government's response to that is that they've made an announcement about 1,000 police officers to be shared 50-50 between the municipality and the government. That promise has been out there for months. Why isn't something happening? Why aren't those 1,000 police officers on the street?

Mr. Del Grande: The city of Toronto, first of all, can't afford it, so it's off the table.

Mr. Klees: So in other words, this promise that this government is making is absolutely empty; is that right? Because you can't afford to match the 50-50.

Mr. Del Grande: That's the problem for the city of Toronto.

Mr. Klees: So if the government were serious about this, in this coming budget, which is just a few days away, would it make sense for this government—if in fact they've gone to the trouble of introducing legislation and they see this as a serious concern—to carve out some of that money and say, "Look, we're going to put special squads into police forces across this province. We'll fund 100% of that, and we'll work in co-operation with municipalities"? Does that make sense?

Mr. Del Grande: I would even be happy if we got 500 OPP officers who would provide assistance to the city of Toronto to help dismantle these, and to help connect the dots. Part of the problem is that we're not connecting the dots. We're busting these houses with nobody in there, so there are no arrests being made.

Mr. Klees: Speaking of busting, under this legislation, as Mr. Kormos pointed out, the first person into a grow-op operation will be an inspector. How responsible is that?

Mr. Del Grande: As I've pointed out, this is a new phenomenon. I've watched some of the debates when I've flicked on the channel, and what bothers me is that everybody says, "It's a good first step." You know what? I'm not interested in good first steps; I'm interested in solid steps. Is this—

The Chair: We'll have to leave it there. I thank you, Mr. Del Grande, for your presentation.

FIRE FIGHTERS ASSOCIATION OF ONTARIO

The Chair: I would now invite our next presenter, Mr. Rodney McEachern, health and safety representative of the Fire Fighters Association of Ontario. Please be seated, Mr. McEachern, and please begin. You have 15 minutes.

Mr. Rodney McEachern: Thank you, ladies and gentlemen. First, I must apologize. I hope this will be on point, but I'm just a country boy who didn't get out of the way of the train last Saturday when I was told to come down here.

Good morning. First, I'd like to thank the committee for allowing our association to address it on this very important and timely bill. I represent the Fire Fighters Association of Ontario. We represent the voice of the volunteer/paid-duty firefighters in this province. My name is Rodney McEachern. I am one of two health and safety reps for our association. Also, I'm an active firefighter with the township of Severn's fire and rescue, with 20 years of service.

After reading the bill, we at the FFAO wholly support the direction it is attempting to go in, but we do have several concerns which we'd like to address at this time.

First, we wonder why this bill is restricting itself to marijuana grow-ops and not all illegal drug operations. As we know, of the illegal drug operations out in our community today, grow-ops are probably the least hazardous, whereas the other types have much greater potential for immediate and ongoing hazardous conditions for all involved.

The next point we are concerned about is in the area of the distribution of proceeds from these operations. What we notice first is that the only emergency service specially mentioned for consideration are the police. While we realize that they have a large part in these types of operations, at either planned or accidentally discovered scenes, fire also does, especially those found accidentally during fire and medical calls. Depending on the types of materials at the scene, a small department's whole budget could be depleted in one call.

The second part of this is that our association would like to see a system set up that would allow fire departments and other agencies to be able to access the funds in advance for monies for training, specialized equipment, education of personnel and public awareness campaigns. This, we believe, is essential, especially to the volunteer/paid-duty fire services. Many small departments have very limited budgets. As you know, these types of operations can be found in any area of the province.

As you may or may not know, volunteer/paid fire services comprise approximately 70% of all the firefighters in the province of Ontario, and we defend approximately 85% of all the municipalities. In addition, unlike small police forces, which, if overwhelmed by an operation, can call in the OPP, fire does not have this provincial backup. In fact, a 50- to 70-man volunteer department may be the largest department in a several-hundred-kilometres area. Hopefully, you can appreciate why advance monies would be a godsend to these departments.

Lastly, we notice that in the mention of setting up groups and/or committees to oversee certain aspects of the bill, the only emergency services mentioned are the police. We believe that fire should also be included in at least some of these groups, as we would be bringing a different perspective to the table, especially the volunteer/paid-duty service, for, as mentioned above, we cover a large portion of this province and these operations can be found in any type of community.

Again, let me thank you for this opportunity to address this committee and assure you that we believe this is a positive step in combating this growing concern in our great province. Thank you.

The Chair: Thank you, Mr. McEachern. We'll have about 10 to 12 minutes to distribute; we'll start with the government side.

Mr. Mario G. Racco (Thornhill): Thank you, Mr. McEachern. You are happy, as I understand it, with this bill. You see merits in this bill.

Mr. McEachern: I see that there are merits to it, but as mentioned, we believe it should go further to address some of the concerns from people before.

I have been told personally in my position as a health and safety representative that an insurance company, as a matter of fact, will tear a house down instead of rebuilding it after it has 30% to 40% damage done to it. To me, with the toxicity from the moulds and the chemicals and that, I can't see why the bill is fooling around with the principle of revamping the house. Just go in and destroy it and rebuild it. It would be safer to everybody in the long run.

1040

Mr. Khalil Ramal (London–Fanshawe): Damaging the house or destroying the house—you don't think it's an extreme measure?

Mr. McEachern: No, I don't. You yourselves, through the Ministry of Labour, are revamping all your

protocols for toxic substances. It has been proven. A courthouse in Newmarket and many schools throughout the province have had portables and rooms shut down because of moulds. Here we have houses where, never mind the moulds, God knows what kind of chemicals these people use to produce what they are producing. The next person who moves in there with a baby—

Mr. Ramal: But we don't knock down the portables. As a matter of fact, we inspect them and we fix them. If you can fix—

Mr. McEachern: As the gentleman before us stated, maybe the people aren't qualified, especially in smaller areas like I represent. My belief is that it's safer and easier and right to the point: If it's a grow-op, if it's a drug house, you go in, tear it down and rebuild it.

The Chair: Please, Mr. Racco.

Mr. Racco: I appreciate what you're saying and I see merit in some cases. But you wouldn't suggest we do that in all cases. There are cases where the damage might be insignificant. There is damage, but it's insignificant. It might be wiser and more economical just to repair rather than destroy the residence. Wouldn't you see merit in being flexible and making a judgment on the case?

Mr. McEachern: That's a distinct possibility, but we also know from practical experience that moulds can hide in very funny places. If the inspection agency, the private company brought in, is top-notch, I would say yes. It may work that way. But we all know that Utopia is a little town on the other side of Barrie and it doesn't exist anywhere else. There are people out there who aren't top-notch.

Mr. Racco: Chair, I would suggest to the gentleman that there are standards in the industry and we would have to make sure that those standards are abided by. But I understand what you're saying. Thank you.

The Chair: Are there any further questions from the government side? No. Then we'll move to the Tory side.

Mr. Klees: Mr. McEachern, you're familiar with the act, obviously, and you're familiar with the section that requires that "An inspector shall enter upon land and into a building at any reasonable time without a warrant for the purpose of inspecting the building." With your background in health and safety, you've seen a number of these places. I'd like to ask you whether this requirement for an inspector to enter a building is a reasonable requirement.

Mr. McEachern: It may be a reasonable requirement, but to do it by himself or herself I would say at the very least is probably a violation of 25(h) of the health and safety code that the employer should take every reasonable precaution. I myself wouldn't, unless I had probably the biggest OPP officer in the Orillia area with me. I've attended several seminars and courses on plants, labs and grow-ops, and they point out that they are booby-trapped. They also point out that the booby traps are not, to the best of their knowledge right now, meant for the police; they are meant for their competitors. But those booby traps don't know whether you're a competitor or law enforcement or an emergency responder.

Mr. Klees: What would your advice be with regard to this section to, first of all, ensure the safety of the so-called inspectors? Also, because we know there are different levels of knowledge with regard to health and safety requirements across this province—municipalities are at various levels of sophistication. Depending on where you are in the province, to be handed this legislation, it may well be that John Smith is a building inspector and all he's ever inspected are semis or single-family homes along the way and has no idea about this, and now he's put into this predicament. What is your advice with regard to this section of the act?

Mr. McEachern: My advice would be that, first, we must have full disclosure from the police. I realize why they do it, and I would say that not say every firefighter, full-time or volunteer, needs to know, but the chief should know that if they get a call to—I'll use my own address—3251 Turnbull, he can say, "Be very careful; that is a suspected crime scene." That does two things: It warns the firefighters to be careful, and it also helps us to ensure that the crime scene is kept in the best condition it can be for the police. After the police have gone in and cleared it of all booby traps, then fine. If they wish, they can have an inspector go in and inspect it. If the person does not have the expertise, then the government should have a 1-800 number that he or she could phone to get the expertise they need, much like fire departments do when we phone the fire marshal's office. That would be my suggestion.

Mr. Klees: So at the very least, a protocol should be put in place so that there's no question about how these issues are going to be dealt with.

Mr. McEachern: Definitely. All municipalities and everybody else should be told that they are supposed to have a policy and procedures book that should be there and can be found.

The Chair: Now to Mr. Kormos.

Mr. Kormos: I'm going to disagree with folks, perhaps a whole lot of folks, who suggest that somehow this bill makes it easier to shut down grow-ops. I go through the bill and, OK, they amend the Crown Attorneys Act to put somebody in charge of forfeited property; they amend the Fire Protection and Prevention Act to double the fines; they tinker again with forfeited property. But people who break the law don't care about doubling fines. If serious penalties were a deterrent, people wouldn't be committing murder, but we know that people commit murder every day.

Where I come from, we assume that the greatest deterrent is the likelihood of being busted. In other words, that's why we speed—well, we do—because we know we've got a pretty good chance of not getting caught. Where I come from, people tend to be deterred more by the likelihood of getting busted. What we're learning from folks is that simply because of the logistics, the numbers, the proliferation of these grow-ops and the scarcity of police resources, these guys can function, heck, for months knowing full well that the police are so busy doing other things that they aren't going to get

busted. So I disagree with the proposition that this bill does anything to enhance shutting down grow-ops.

Everybody seems to know where these places are. Unlike Mr. Del Grande, I've never been in one. The closest I've ever been to a marijuana grow-op was a Bob Dylan-Grateful Dead concert at Rich Stadium around 20 years ago. That was outdoors.

Mr. McEachern: I must agree with you, sir. I guess the simplest way to cure this problem would be for the government to legalize all drugs. Right now, we are in an area that the United States and Canada went through when they had prohibition on alcohol. Once they said you couldn't do it, everybody and their grandmother started bootlegging. If it were legal and the government were collecting taxes on it, there probably would not be as many, if any, illegal houses, because then you could go to the corner store and buy it with your cigarettes.

Mr. Kormos: You're not going to be able to do that for very much longer, either.

Mr. McEachern: That's true, yes.

Whether that will ever happen, I don't know. The only other thing I can say is that the fines and deterrents in this bill—and I must agree, I don't believe in first steps, but it is a first step. To make them worthwhile, they have to be stronger. To get back to what I said before, if you said, "We're going to tear the house down if you rent it to somebody who puts an illegal operation in it," maybe some of these landlords would think twice about just taking the couple of thousand dollars in advance and saying, "Have fun." I'm quite sure that if the landlord who owns the old Molson brewery in Barrie had thought the place would have been torn down, he might have inspected it a little more often than it was before they found "That bud was for you."

Mr. Kormos: Thank you kindly, sir.

The Chair: Thank you to you, Mr. McEachern, for your deputation.

1050

RON ENNS

The Chair: I would now invite to the floor Mr. Ron Enns, who comes to us in his individual capacity. Please come forward. I remind you that you have 10 minutes in which to make your deputation.

Mr. Robert W. Runciman (Leeds–Grenville): On a point of order, Mr. Chair: Just a small matter. When you're referring to the members here, I would appreciate it if you would refer to us as the official opposition, not Tories, unless you're going to refer to the folks over there as Grits. I would appreciate being referred to as the official opposition.

The Chair: I will abide by that, Mr. Runciman.

Mr. Kormos: Mr. Chair, you can refer to me as a New Democrat any day.

The Chair: Mr. Enns, please begin.

Mr. Ron Enns: I have a story to tell here. I hope it's in line with what you people are talking about.

I cannot help but believe that Bill 128 will be abused on an alarming scale. I've come to this conclusion because of what has happened to myself and my wife over the last 10 to 12 years.

We live in an incredibly beautiful river valley, known as the Maitland, approximately 15 minutes northeast of Goderich. Our farm has a commanding view of the countryside, and people who visit talk about our luscious gardens, century-old farm buildings, trout pond, abundant forests, and both the mainland and island, which are all part of a one-hundred-plus-acre organic farm. It is the envy of many, including, unfortunately, OPP officers.

Backtrack now to around 1993-94, when I used to buy eggs outside of Goderich from an old farmer named Horace Crawford. After some time, I got to know him and he wanted to know where I lived. When I told him, he said he had heard about the property from an OPP officer and was told it was only going to be a matter of time before he took possession of the property, because the person who owned the property would be losing it. I was shocked. I had been in trouble a couple of years earlier, before I bought the farm, with marijuana, but had no idea the police had intentions of possessing it.

For the next few years, I experienced a tremendous amount of harassment. OPP or officer-owned planes would constantly fly over the farm at dangerously low altitudes, diving toward the buildings, with the animals and their babies inside, swooping down on my wife and I when working in the fields, or just keeping us under surveillance.

It got so bad that I formally launched a complaint to the federal aviation commission, which included the plane identification number. The complaint was forwarded and the annoying behaviour nearly came to a stop.

Some time after this, a nearby resident, David Hedley, told me that the officer flying one of those planes in question had said, "It's only a matter of time before I get him."

The following August, in 1997, on the 19th, I had to ask three officers to please leave my property—they were trespassing in my bean field—after I got home on a Friday afternoon. They left reluctantly.

I still had no idea to what lengths they would go to possess our farm.

The following August, on the 21st, in 1998, a helicopter landed in the river on the back of our farm, and at the same time I saw three vans going up the neighbours' fence line. I asked my wife to stay in the house and keep the dog with her. I went out on my bicycle to see what was going on and found 14 police officers, some of whom were heavily armed, walking through our property, carrying marijuana. When I confronted them, they said it was found on my property and it was mine.

The situation got tense when I pulled the truth out of the commanding officer, who indicated it was not found on our property like I was originally told. It got even worse when one of the officers tried to pick a fight with me by being extremely rude and vulgar. A neighbour, Scott Rogers, witnessed this and said he would not have believed it if he had not seen and heard it for himself.

At this point, I contacted a lawyer in London, Fletcher Dawson, and he sent up a couple of investigators to check out my story, because at first, he thought this could not be happening. Upon finding out my story was for real, he contacted Staff Sergeant Gary Martin, in Goderich, in writing and warned him of the possibility of civil action. The lawyer told me he would not tolerate this kind of behaviour in this country.

The harassment continued, but only on different levels, such as harassing someone for co-signing for a possession-only licence for firearms for me, and lying to the federal government about being in trouble, causing them to have to launch an investigation, resulting in a detachment reprimand. After this, I got my POL, and they sat in front of our house and did intimidating drive-bys.

It does not stop here. When they found marijuana in the area, they would tell people it was mine. I heard this from a millwright at Kellogg's in London, where I've worked as a mechanic for the past 28 years, who happens to be married to a girl whose parents live up the road. They told me that when they found marijuana on their property, it might belong to the Enns guy up the road.

Enough about police misconduct; I think I've made my point here. Police are full of hate over the marijuana situation because of what happened in Mayerthorpe, Alberta, trying to equate a 20-plant operation to the evils of grow-ops. Police have manipulated the media, the citizens of Canada and now the justice system for more money and more men by dressing up in chemical suits for photo-ops, saying it's a gateway drug and exaggerating about stolen hydro and increased criminal activity.

A substantial number of grow operations busted in London, shown on a map of the city last Saturday, were under 20 plants. Could having a few plants be a good reason for losing your home? I believe most people would not think so. This game politicians have created for themselves of chasing and punishing people involved in cannabis has gone way too far when something one has worked for all one's life can be swept away by greedy enforcement officials.

This law is draconian. Drug prohibition can undermine the integrity of policing, as can be seen in the evidence provided in this case. I implore you not to give them any more power resulting in further corruption and immoral behaviour. This is a losing battle, and taking people's property will not help things at all. In the case of high-profile busts such as Parkdale and Molson's, how many people at the top were convicted? How much property was confiscated? None. Confiscating citizens' homes will only lead to bigger or more plentiful operations in rental units, where more people will be put in danger; for example, faulty wiring.

The police consider anything with more than one plant a grow-op run by organized crime, which is simply not true. Crime-oriented businesses that are involved in drug dealing can be shielded by corrupt police officials and do not have to worry about losing their properties. Police officers caught up in corruption probes fall under a different set of rules than the general public. When three or more of their members are criminals, they do not lose their homes acquired through illegal gains.

Another example of a law not being evenly applied in this case is Mr. George W. Bush, who has admitted to smoking pot but suffered no penalties, even though he tells us up here to get tough about it and has had people in his own country serving up to 20 years in prison for admission of possession.

Bill 128 will also, at times, be a double standard, and people without money and influence will pay the price. This is so very wrong. Please stop the rich, powerful and corrupt from stealing from us under the guise of justice over something that has been proved to be not that bad by federal and health agencies. Criminal law should not be a tool of oppression toward a specific group in society, as it was in Germany prior to World War II. V-E Day is coming up, and I hope our fathers' sacrifices were not in vain.

The Chair: Thank you, Mr. Enns. We'll have minimal time between the parties. We'll start with Her Majesty's loyal opposition.

Mr. Runciman: Mr. Enns, I guess we really can't get into the specifics of your situation or the merits. Obviously, you have some strong feelings. I do share some of your concerns with respect to the powers that are allotted under this legislation, especially the entry without warrant—I think that's one that should be of concern—and the elements of danger that could pose to those folks who are untrained and unaware but who are entering properties without warrants. They themselves could face some challenges and some risks that they would be completely unaware of. I think there's a safety element there, and certainly the rights of property owners need to be respected as well.

I'm just curious, though, with respect to your concerns. You mentioned going to federal authorities. I don't know if you've talked to your local MPP about your concerns or looked at the police complaints process in Ontario. If you feel you're being inappropriately dealt with by local police authorities, there is an avenue for you to pursue as well.

1100

In some respects, I share your view that this is something of a losing battle, and I don't believe that at the end of the day this legislation is going to have any impact whatsoever in terms of grow-ops in the province of Ontario, especially those that are within the purview of organized crime. I don't think this will have any impact whatsoever.

I wish you well. I appreciate your concerns, and I think there are some avenues that you could consider pursuing, if you haven't already done so.

The Chair: We'll leave it at that. Thank you, Mr. Runciman. Mr. Kormos?

Mr. Kormos: Thank you very much for coming today, sir. Your input is considerable. You've heard me say before that there's nothing in this bill that's going to help police bust grow-ops. Do you understand what I'm

saying? At the end of the day, if you're going to shut down grow-ops, cops have to be able to shut them down—end of story—and there's nothing in this bill that helps the police do that. I'm looking forward to the next presenter, because the next presenter may be supportive of the bill and may explain to us what specific sections help the police.

Criminals don't care if you increase the fines for violations of the Fire Protection and Prevention Act, because they have no intention of getting caught and, quite frankly, if there's enough money in the operation—these things have got to be profitable; they've got to be, or else people wouldn't be taking over Toronto. Heck, down where I come from, you can buy a house for what you pay for a parking spot here in Toronto. If you're telling me that people are turning Toronto houses into grow-ops and basically making the property worthless, there's got to be a whole lot of money being made in these operations. So doubling the fines for breaking the fire code—yikes.

Then we hear that you've got a bona fide criminal operation, and because of scarce police resources they can just keep operating because the police don't have the resources to move in and bust the joint, never mind prosecuting. That's problematic.

The Chair: Thank you, Mr. Kormos. We'll move to the government side.

Mrs. Sandals: I believe we're out of time, Mr. Enns, but thank you for your information.

The Chair: Thank you, Mr. Enns, for your deputation.

ONTARIO PROVINCIAL POLICE ASSOCIATION

The Chair: I would invite our final presenter of the day, Mr. Brian Adkin, president and CEO of the Ontario Provincial Police Association. Welcome. I will advise you that you have approximately 15 minutes for your deputation. Please begin.

Mr. Brian Adkin: I have some copies of the presentation.

The Chair: You might hand it to the clerk, who will be pleased to distribute it to us all.

Mr. Kormos: In the interim, Chair, could we make a request to legislative research?

The Chair: Please go ahead.

Mr. Kormos: This is in reference to the sections of the bill that purport to give local hydro distributors the authority to disconnect a hookup. What powers, if any, are there now for a hydro distributor to, let's say, red tag, if that's not an inappropriate word, an improper, illegal or dangerous hookup?

The Chair: Your request is received by legislative research.

Mr. Adkin, your time begins now.

Mr. Adkin: Thank you very much. My name is Brian Adkin. I'm the president of the Ontario Provincial Police Association. I'm very pleased to be here and to have the opportunity to address the committee.

The Ontario Provincial Police Association is the representative bargaining agent for over 5,400 uniformed and 2,500 civilian members of the Ontario Provincial Police. Members of the OPP provide policing services to those areas of the province that do not have municipal police forces. In addition, the members of the Ontario Provincial Police provide investigative services, on the direction of the minister of public safety, to assist municipal forces. We have several drug squads that work throughout the province on a stand-alone basis, as well as participate in many joint police force investigations.

The proposed legislation, An Act to amend various Acts with respect to enforcement powers, penalties and the management of property forfeited, or that may be forfeited, to the Crown in right of Ontario as a result of organized crime, marijuana growing and other unlawful activities, is a needed tool for investigative bodies throughout the province. The new legislation provides for the development of a special account to oversee proceeds from seized assets of grow operations and other related criminal activities. These proceeds can and should be utilized on enforcement, crime prevention and victim compensation.

Marijuana grow operations are an issue that is out of control in Canada and, in particular, in Ontario. As identified at the Green Tide summit, marijuana grow operations are a major funding source for organized crime groups, which in turn fuels the trafficking of illegal firearms and drugs such as cocaine and ecstasy in Ontario. The problem continues to grow, and criminals continue to generate incredible profits. The Ontario Provincial Police Association has identified several areas regarding marijuana grow operations which are a concern to our members assigned to drug enforcement.

We also believe that marijuana grow operations should be classified as clandestine labs. This approach would cover all illegal labs in Ontario, such as indoor marijuana grow operations, methamphetamine labs, extraction labs for cannabis resin, e-labs for meth and ecstasy, and M and M—meth and marijuana—labs.

Police enforcement of clandestine drug operations has become merely reactive rather than proactive. Clandestine labs are found in all communities, from industrial areas such as the former brewery operation in Barrie, Ontario, to many residences throughout Ontario. Compounding these investigative issues is a general feeling from our members that persons convicted of these offences are not receiving appropriate penalties.

We are also concerned that the public is not aware of how extensive this problem has become and the amount of money that is being made by organized crime.

I just want to deal with the lab issue for a minute. We think that clandestine labs of all types are very important. The clandestine labs are for methamphetamines and ecstasy. Five years ago in the province, we were surprised by the influx of marijuana grow-ops and were subsequently caught off guard with resources, equipment and training. As I said earlier in the presentation, we see this as now being out of control. We now see meth labs

or clandestine labs coming to our province in a huge way. In 2002, there were 20 labs; in 2003, 25 labs that were dismantled; in 2004, 31 labs. So far In 2005, there have been six, and the number continues. I just want to emphasize how important this is.

The lab investigations may require assistance from municipal and provincial authorities—environmental, building and bylaw authorities—to work along with the police to ensure that the labs are dealt with in a safe, effective and efficient manner, always keeping in mind public safety. It's a critical issue for us.

The first area of concern that we have is the health and safety of our members assigned to investigate and take down these clandestine labs in Ontario. Drug enforcement officers must all be issued with the proper equipment required for protection from the health, environmental and chemical hazards found in clandestine labs. Not only must all drug enforcement officers in Ontario be issued proper equipment—such as APR masks, body suits, boots, Kevlar and plastic gloves—but a health and safety standard must also be created to ensure the compulsory wearing of the proper equipment when taking down these clandestine labs. Training must also be provided to all police officers, identifying the dangers associated with clandestine labs. We recommend that the minister establish a working group to develop regulations and standards under the Police Services Act for mandatory equipment for drug enforcement units and front-line police personnel.

The next topic is inadequate resources. Inadequate resources are the second area of concern for the OPPA. As previously indicated, clandestine labs are out of control in Ontario, and police services do not have the proper resources to tackle the problems of clandestine labs and criminal organizations. Operating under organized crime, marijuana production in Ontario has brought with it related violence, including homicides, home invasions, weapons offences, extortion, money laundering and other illicit drug activity such as ecstacy, cocaine and methamphetamine. Illicit drug production and trafficking is the primary financial vehicle for organized crime, and targeted drug enforcement is the most effective and proven method to disrupt this activity and those profiting from these means. Attacking the criminal organizations must be the top priority for law enforcement agencies. Police services in Ontario are currently only reacting to identified labs and do not have the resources to proactively address the bigger problem: organized crime organizations.

The Ontario Provincial Police has 10 fewer members assigned to drug enforcement than in the mid-1990s, and indoor marijuana grow-ops are increasing in unbelievable numbers. The Ontario Provincial Police experienced a 60% increase in indoor marijuana operations seizures between January 2001 and December 2002. Marijuana plant seizures in Canada have increased 60% from 200,000 plants seized in 1993 to 1,400,000 in 2000. It is estimated there are approximately 15,000 marijuana grow operations in Toronto alone.

1110

The Ontario Provincial Police drug enforcement section is well respected as the lead agency in drug enforcement in Ontario. With extensive experience in operating successful joint forces operations, delivering consistent, efficient and effective drug enforcement initiatives province-wide, the OPP drug enforcement section is perfectly suited to continue to lead in the battle against clandestine labs in this province. The formation of OPP regional JFOs focusing solely on clandestine labs and the criminal organizations behind these labs in Ontario is the only way to proactively attack this problem and build safer communities in Ontario. The OPP regional JFOs, spearheaded and maintained by members of the OPP drug enforcement section, would increase coordination, co-operation and information-sharing between police forces in Ontario, thus creating a single entity tasked with proactively combating organized crime groups instead of simply putting out local fires. The OPP regional JFOs, or joint force operations, could be funded from assets seized from the criminal elements and private funding from other stakeholders.

As indicated in the NCC working group on marijuana grow operations report of September 2003, it is generally accepted that one of the strongest deterrents to criminal conduct is to take from the offender any profits generated from the commission of the offence. The NCC report also indicated that the province of Ontario's civil assets forfeiture is far more effective than the federal proceeds-of-crime legislation. This provides for a more streamlined approach to forfeiting proceeds of crime while providing appropriate protection to innocent parties.

The Ontario Provincial Police Association supports Bill 128 and, in particular, the amendment to the Fire Protection and Prevention Act, 1997, pertaining to doubling the maximum penalties for any contravention of the Ontario fire code, such as tampering with wiring that would cause excessive heating that would lead to a fire, something commonly found with grow operations. Additionally, the association is supportive of allowing local hydro distribution companies to disconnect hydro without notice in accordance with a court order or for emergency, safety or system reliability concerns.

The association is supportive of legislation that speaks to addressing any threats likely to endanger the safety of any person or law enforcement official. In particular, not only does the act assist enforcement agencies within the province, it also provides our members and the public at large with the necessary measures to address marijuana grow operations and protect the public from the theft of hydro, which is a costly offence.

However, there is a concern that the association feels needs to be addressed—what it perceives as a shortfall to the legislation. Specifically, that is the proposed changes to the Building Code Act, 1992, requiring building inspectors to enter a building and conduct an inspection after being notified by a police service that the building contains a marijuana grow operation. The proposed amendment also indicates that "An inspector who finds

that a building that contains a marijuana grow operation is unsafe shall make an order setting out the reasons why the building is unsafe and the remedial steps necessary to render the building safe."

The Ontario Provincial Police Association, as a member of the Green Tide action group and its subcommittee, has determined from the Ontario building inspectors' association that their members, who will be tasked with conducting these inspections, are not properly trained to identify structural damage and the vast variety of moulds that in themselves are highly toxic in nature. The association believes that, in the fairness of safety and of ensuring that a proper examination of the find is conducted, the government identify the appropriate structural and environmental engineers who can, in turn, effectively assess the situation and set in place the appropriate measures to be undertaken.

We congratulate Minister Kwinter for his leadership on the Green Tide Action Group. His coordination of this group has helped raise public awareness of a critical situation and has brought together stakeholders to develop solutions to the problems. The OPPA has been an active participant on this committee and we thank the minister for allowing us to participate. We support Bill 128 and look forward to its passage as soon as possible to protect public safety.

We'd be quite pleased to answer any questions that may come up.

The Chair: Thank you, Mr. Adkin. We have about five minutes to distribute, and we'll start with Mr. Kormos.

Mr. Kormos: Let's deal with this business of building inspectors, because you know I'm not happy with the way the section is written now. Can you cite an instance where the police have busted a grow-op and where building inspectors have said, upon being notified, "No, we're not going to come and inspect"?

Mr. Adkin: No, I can't, Mr. Kormos, but one of the concerns we have, as we said in our report, is about the issue of being able to do it properly. I think the whole situation with grow-ops has been moving and constantly improving. With the Green Tide committee being brought together, these are some of the issues that have been identified. But it's important to improve on that.

Mr. Kormos: I want to take you back to page 6 of your submission. I don't want the record to be in any way incorrect because I read in the first paragraph your data, correcting an inadvertent typo there, "200,000 plants seized in 1993" in Canada "to 1,400,000." Isn't that what that's supposed to read?

Mr. Adkin: That's right.

Mr. Kormos: So 1,400,000 seized in 2000. And if we sort of extrapolate, that's the growth from 1993 to 2000, in seven years; so to 2005, if it's growing at the same rate, we're up to millions of plants capable of being seized. The plants that are seized are what percentage of the actual plants being grown, in your estimate?

Mr. Adkin: I wouldn't know that, Mr. Kormos.

Mr. Kormos: Fifty per cent?

Mr. Adkin: Less than that, I would guess.

Mr. Kormos: Thirty per cent?

Mr. Adkin: Yes.

Mr. Kormos: Good God. And this stuff isn't being used for cattle feed, is it?

Mr. Adkin: No, not at all. It's being used to fund criminal operations.

Mr. Kormos: And people are smoking this stuff as product, at the end of the day.

Mr. Adkin: I think you have to be careful when you're saying that, because you should be able to say where they're smoking it, and most of it is being sent to the United States. I think this is part of the problem that comes up and maybe some of the things you're touching on. This is not a group of people just sitting around and growing a bit of marijuana for their own consumption; this is a criminal operation that is highly sophisticated and is sending illicit drugs all over North America.

Mr. Kormos: It's commercial, no two ways about it.

Mr. Adkin: It's commercial and industrial.

Mr. Kormos: Between you and me—understand, I'm not disputing that by any stretch of the imagination.

The Chair: We'll move to the government side.

Mrs. Sandals: Good morning, Brian. Just to note that your colleagues from the PAO cited the same concerns around officer health and safety when you first go into the grow-op. Just a couple of quick questions. You've mentioned in your remarks that you find that the Ontario civil assets seizure is more effective than the federal process. So I'm presuming that you're supportive of the section in this legislation which takes more of the process back to the province where we've got a better record, perhaps.

Mr. Adkin: Yes, it's a far better working system.

Mrs. Sandals: If we could look at the building inspector issue a little bit, first of all. You've identified an issue around here whether building inspectors are always the best people to deal with this. I'm presuming, then, that if we were able to position this so that the municipality would have some discretion in appointing the most appropriate body, you would be supportive of that sort of a—

Mr. Adkin: We would be. Our concern about it is, first of all, the issues set out in the report and, secondly, the long-standing implications with this. One of the problems you have is that you don't know what goes on. You don't know where that house is going to be and what's going to be happening to that house or to the industrial operation or commercial operation as well, so it's important to have people with the right training who can do it. But we're looking for the proper group of people.

Mrs. Sandals: I'm assuming that because we've heard some give and take between municipalities and back and forth, if you don't think building inspectors are qualified, then you certainly don't think police officers are qualified to be making recommendations about giving orders.

Mr. Adkin: Certainly, it's not our area of expertise at all. It's somebody who needs to have the technical knowledge where they can make statements and be aware of the implications down the road.

Mrs. Sandals: So then I'm inferring that you—

The Chair: Thank you, Mrs. Sandals. I would now move to the official opposition.

Mr. Runciman: I've got two minutes to ask a tonne of questions, but anyway, I guess I'll get to the crux of this. Mr. Adkin, you're in support of this. If we have you back here in two years, in 2007, with your support of this, are you indicating that we're going to see a dramatic lessening of grow-ops in Ontario as a result of this legislation? Is that what you're suggesting by your submissions?

Mr. Adkin: With our submissions? Yes, Mr. Runciman, I think it would be possible to see that. There are some other areas I've been courting with this as well. By appearing at this committee, we're hoping that it will raise the profile of the problems with this and also have the support of the government to deal with the federal government to raise penalties, because that's another important issue.

Mr. Runciman: I'll bet you a good cigar that it hasn't improved in terms of this legislation.

Mr. Kormos: It better be only a cigar.

Mr. Bob Delaney (Mississauga West): You won't be able to smoke it in Ontario anyway.

Mr. Runciman: We'll have to find a place. According to the government, we won't even be able to do it in our apartment.

You emphasized monies and organized crime. Is there any indication from intelligence and JFOs that any of these funds are being directed toward terrorist organizations anywhere in the world?

Mr. Adkin: I'm not familiar with that, Mr. Runciman. I couldn't state that.

Mr. Runciman: OK. In terms of my view on this, it's a federal matter in terms of minimum sentences, and we know that. I'm not sure what the current government's position is in terms of pressuring the federal government to implement minimum sentences. I think that's the real way to have an impact.

What would your association think of the provincial Attorney General setting a threshold for crowns in terms of the size of a grow-op and the sentence meted out by the judge dealing with that case? What I'm suggesting is a threshold. If you're looking at a major operation, where someone is getting 12 months in a provincial facility, they're out in three; a great return versus risk. If the crown had a threshold in terms of appealing, we would at least send a message out to the judiciary that we're just not going to sit back and allow these kinds of soft sentences to occur where people can operate multi-million-dollar operations, get a slap on the wrist and be back in business in six months.

Mr. Adkin: We think that would be very positive. That's one of the big problems with the situation right now.

The Chair: Thank you, Mr. Adkin, for your deputation.

Is there any other business on behalf of the committee? Seeing none, I advise the committee that we are adjourned until Wednesday, May 11, for our clause-by-clause analysis. This committee is adjourned.

The committee adjourned at 1121.

CONTENTS

Thursday 5 May 2005

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Président
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr. Michael A. Brown (Algoma–Manitoulin L)
Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)
Mr. Kevin Daniel Flynn (Oakville L)
Mr. Frank Klees (Oak Ridges PC)
Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)
Mr. Mario G. Racco (Thornhill L)
Mrs. Elizabeth Witmer (Kitchener–Waterloo PC)

Substitutions / Membres remplaçants
Mr. Khalil Ramal (London–Fanshawe L)
Mr. Robert W. Runciman (Leeds–Grenville PC)
Mrs. Liz Sandals (Guelph–Wellington L)

Clerk / Greffier
Mr. Katch Koch

Staff / Personnel
Ms. Margaret Drent, research officer,
Research and Information Services

JP-29

ISSN 1710-9442

Legislative Assembly of Ontario

First Session, 38th Parliament

Official Report of Debates (Hansard)

Wednesday 11 May 2005

Standing committee on justice policy

Law Enforcement and Forfeited Property Management Statute Law Amendment Act, 2005

Chair: Shafiq Qaadri
Clerk: Katch Koch

Assemblée législative de l'Ontario

Première session, 38e législature

Journal des débats (Hansard)

Mercredi 11 mai 2005

Comité permanent de la justice

Loi de 2005 modifiant des lois en ce qui concerne l'exécution de la loi et l'administration des biens confisqués

Président : Shafiq Qaadri
Greffier : Katch Koch

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Wednesday 11 May 2005

Mercredi 11 mai 2005

The committee met at 0902 in room 228.

LAW ENFORCEMENT AND FORFEITED PROPERTY MANAGEMENT STATUTE LAW AMENDMENT ACT, 2005

LOI DE 2005 MODIFIANT DES LOIS EN CE QUI CONCERNE L'EXÉCUTION DE LA LOI ET L'ADMINISTRATION DES BIENS CONFISQUÉS

Consideration of Bill 128, An Act to amend various Acts with respect to enforcement powers, penalties and the management of property forfeited, or that may be forfeited, to the Crown in right of Ontario as a result of organized crime, marijuana growing and other unlawful activities / Projet de loi 128, Loi modifiant diverses lois en ce qui concerne les pouvoirs d'exécution, les pénalités et l'administration des biens confisqués ou pouvant être confisqués au profit de la Couronne du chef de l'Ontario par suite d'activités de crime organisé et de culture de marijuana ainsi que d'autres activités illégales.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, good morning to you and to the members of the committee. I call to order the meeting of the standing committee on justice policy to begin clause-by-clause consideration of Bill 128.

A copy of all amendments was received by the clerk as of 5 p.m. Monday, the agreed-upon deadline. That has been distributed, and we will now move to consideration of these amendments.

I'd also like to welcome on our collective behalf legislative counsel, Ms. Susan Klein, who is of course present here to assist us with clause-by-clause consideration.

I would now move to consideration of the package we've all received. I open the floor: Are there comments, questions or amendments to any section of the bill? Please begin.

Mr. Peter Kormos (Niagara Centre): I suppose the place to start is at the beginning, and I find myself in agreement with what appears to be the government position of voting against section 1 of the bill, which is of course amendments to the Building Code Act.

The Chair: Have you completed your comments?

Mr. Kormos: Yes.

The Chair: I open the floor.

Mrs. Liz Sandals (Guelph–Wellington): We have no amendments to propose to section 1, the amendments to the Building Code Act. We will be proposing some amendments later on to the Municipal Act. Just so Mr. Kormos doesn't get his hopes up too high, we would propose to delete some of the language which is currently proposed to amend the Building Code Act and put that in the Municipal Act to accommodate some of the commentary we heard from some of our witnesses at hearings. I presume that the official opposition's intent is the same, that neither one of us is proposing any amendments to the Building Code Act, and that we would simply vote against section 1 of the Building Code Act, the amendments—

The Chair: Just to be clear, the first two pages of these are not proposed amendments, but notices.

Mr. Kormos: I do want to indicate that I've received a letter from Ann Dembinski. I'll give the clerk a copy so that he may distribute it to caucus members. Ms. Dembinski, of course, is president of CUPE Local 79, city of Toronto workers. She writes with reference to section 1 of Bill 128 and the requirement that building inspectors enter without warrant and so-called "inspect" on the advice of a police service. She finds it to be highly objectionable. She writes—again, you'll have copies of her letter in a few minutes—that the bill, with respect to that at least, raises very serious concerns and threatens the health and safety of municipal building inspectors.

While at first blush, as you'll recall, when we started here I was of the view that this bill was relatively benign—I'm not sure it did anything to make it easier to shut down grow-ops, but it was in and of itself benign—the reference in section 1 to the warrantless search, mandatory and without discretion, by a building inspector into a crime scene was of great concern, to the point where I can't support the bill. Not only can I not support that section, but I can't support the bill if that or a similar section is in it. That's why I'm in total agreement: Section 1 should be out, out, out.

I'm looking forward as well to any advice as to a definition of "grow-op" being imported into the bill, because we still don't have that. We don't know whether it's Grandma raising one plant so she can smoke it to relieve the impact of her glaucoma or whether it's your college student child raising two plants as part of his or her botany course. It's obvious when there's 1,000—is it Molson up in Barrie? I don't want to misname the brewery. Joe Tascona's riding, home of the biggest grow-op in Canadian history, up at Molson—we know that's a

grow-op; that's self-evident. But I'm concerned about the lack of definition here.

The Chair: Are there any further comments on the first two pages of notices?

Mr. Garfield Dunlop (Simcoe North): No. I do have a comment on the third one, though, but that's fine.

The Chair: May we proceed, then, to vote on section 1?

Mr. Kormos: Recorded vote, please.

The Chair: Recorded vote.

Nays

Brown, Brownell, Delaney, Dunlop, Kormos, Racco, Sandals.

The Chair: Section 1 is lost.

We'll move now to consideration of the first motion, page 3. Oh, I'm sorry. Section 2, page 6: Any comments, questions, debate?

Mrs. Sandals: If I could comment, there are a number of amendments there that, seeing as we have just gotten rid of section 1 of the bill, we're not going to be proposing to alter the bill. As far as I'm concerned, we're now looking at the government and I think the PC pages, 4 and 5 as they're numbered in my package, which would be dealing with section 2 of the bill, where again the government and the official opposition would be in agreement that we should delete that section of the bill by voting against it.

The Chair: Mrs. Sandals, you're correct. We have actually dealt with section 1 in its entirety by just voting it down, so we're now proceeding to section 2, which I advise you is on page 6.

Mr. Dunlop: Mr. Chair, what you're saying is that you had a government motion, notice number 2. Now the motion that you had referring to section 1—

Interjection.

Mr. Dunlop: Oh, you're not moving it. You're withdrawing that, then?

0910

Mrs. Sandals: Yes.

Mr. Dunlop: I thought you were going to actually—

Mrs. Sandals: It was there in case we didn't withdraw that section. But seeing as we have successfully withdrawn the section, we no longer need to amend it.

Mr. Dunlop: Oh, so you put that in there just as a standby.

Mrs. Sandals: Just in case no Liberals showed up and hordes of opposition members showed up.

Mr. Dunlop: I see you followed our lead. OK.

The Chair: Now that that is settled, we will move to consideration of section 2, page 4. It is a PC motion.

Mr. Kormos?

Mr. Kormos: There are joint proposals, rather than motions by the Liberals and the Conservatives that section 2 be defeated. I suppose my question is to the government: Why do they want to defeat section 2?

Mrs. Sandals: If I may, the relevant thoughts will be proposed as amendments within the Municipal Act.

The Chair: Are there any further comments on this notice regarding section 2 of the bill?

Mr. Dunlop: Are we doing them together now? The government recommends voting against section 2, and so does the opposition in our notice number 4 and number 5, and then number 6, I assume, is the same as—

Mrs. Sandals: It would be the same. If we get rid of the bill, we can't amend it.

Mr. Dunlop: OK.

The Chair: Are we ready to vote on section 2 of the bill with regard to this notice?

Mr. Kormos: Recorded vote, please.

The Chair: Recorded vote.

Nays

Brown, Brownell, Delaney, Dunlop, Kormos, Racco, Sandals.

The Chair: So section 2 of the bill is now lost, and of course any proposed amendments referring to section 2 are now orphaned, stranded.

May I seek consent from the committee to block consideration of sections 3 to 5, seeing as there are no proposed amendments?

Mr. Kormos: One moment, Chair, if I may. We've got these different groupings here, the next grouping after purported amendments to the Building Code Act or the Crown Attorneys Act. I'm requesting the Chair to restrict groupings to groupings within a particular part of the bill. So I'll be content at this point to deal with section 3, but since section 4 is under amendments to the Crown Attorneys Act, I ask that it be treated separately.

The Chair: Are there any further comments on section 3?

Mr. Kormos: Yes. As I indicated—and I have no qualms about supporting section 3. But the mere fact of increasing fines for people who are engaging in huge marijuana grow-ops—these people don't expect to be caught. The reason, in my view, why people commit crimes is because, as I say, most of the time they don't expect to be caught. I mean, people murder other people knowing full well that the penalties for murder are the most serious penalties in the Criminal Code, and they do it—well, they do it, tragically, more often than we would wish because most murderers don't expect to be caught. They expect to hide the body, hide the murder weapon and rub their fingerprints off like some old Matlock episode.

All I'm saying is that raising the fines in and of itself is not going to help the police bust grow-ops, and that's what we heard. We heard from the Police Association of Ontario and some of the community neighbourhood groups how frustrating it was. They know where the grow-ops are, but three months to a year later—and it's no criticism of the police, because they have limited resources. Bruce Miller in effect said that there isn't a

snowball's chance in hell of busting all the grow-ops in Ontario even if and when they know where they are.

So I'm going to support the increase in fines, but at the end of the day I say let's not pretend that this is going to help police bust grow-ops.

The Chair: Any further comments on section 3? Seeing none, are we ready to vote on section 3?

Those in favour of section 3? Those opposed? Section 3 is carried.

Section 4: Comments, questions, debate? Mr. Kormos?

Mr. Kormos: No, I have no commentary on—yes, I do. The crown attorney's office, the Ministry of the Attorney General—we've been dealing with that office a lot as of late around, for instance, the dangerous offender application that's being made, because it can only be made with the authorization of the Attorney General down in Niagara region, as we talked about in the House and as the press has reported on; and, of course, the 810 application coming up in the province of Quebec and the allocation of resources.

Again, I don't dispute the goal of the section, but let's understand that crown attorneys' offices, as I know them, continue to be hard-pressed to find resources to deal with the tasks that they have at hand now. That's just a problem. We can mandate this, but once again, understand that crowns across this province are just run ragged. They've got huge caseloads, and they can't manage those as well as they would like to.

The Chair: Further comments or questions on section 4? Seeing none, are we ready to proceed to the vote on section 4?

All those in favour of section 4? All those opposed? Section 4 is carried.

Section 5: Comments or questions?

Mr. Dunlop: Mr. Chair, I have a motion that you probably have in front of you and that I'll read through.

The Chair: With respect, I think you're probably referring to section 5.1.

Mr. Dunlop: I'm sorry.

The Chair: Once again, I open the floor for comments or questions on section 5.

Mrs. Sandals: I'm sorry, did Mr. Dunlop move his motion?

The Chair: No. Mr. Dunlop's PC motion refers to the next section, which is labeled so far as section 5.1. We're now dealing with the section anterior to that, which is section 5.

Any comments or questions on section 5?

Mr. Kormos: Once again, in and of itself it's probably inoffensive, but in and of itself it's doing nothing to give the police the tools they need to shut down grow-ops. You heard the frustration in the group that was here from, I believe, the Scarborough area last week. Remember, Mr. Klees tried to trick them into saying, "Oh, it's the evil of smoking marijuana." They said, "No, no, no. That's not the issue. We know people smoke it." That's what they were saying. It's the problem of having a clandestine, illegal grow-op in a residential neighbourhood. That's what their grief was about, and the danger it poses to neighbouring properties when it's a big grow-op.

I'm still concerned about the lack of definition, of course. Is the government purporting to say that a grow-op is some senior citizen growing a marijuana plant to deal with the pain that he or she suffers from arthritis—do you know what I'm saying?—or an HIV-positive AIDS victim who has lost his or her appetite and is losing weight, who smokes marijuana? As you may know, Chair, marijuana apparently stimulates appetite. I was a skinny kid, so I wouldn't know.

Is that what we're talking about, or are we talking about the full-blown, large-scale, criminal-operated—the ones where you've got the hydro wires jumped and you're creating fire hazards, the ones where you've got gangs involved, so you put booby traps in to scare off other gangs that might want to rip off their weed? I still don't know that.

As I understand, the government is going to take an interesting position after we complete section 5. While motions to adjourn are not usually debatable, I'm going to ask for unanimous consent, should there be a motion to adjourn, to speak to it for no more than two minutes per caucus.

The Chair: Mr. Kormos, could you please rephrase, or refresh or re-enlighten us as to what you're asking for?

0920

Mr. Kormos: I'm seeking unanimous consent, should there be a motion to adjourn put on the floor, that it be debatable for no more than two minutes per caucus, notwithstanding that motions to adjourn, of course, are not usually debatable.

The Chair: Do I have unanimous consent for this proposal? I hear at least some soft dissents. Mr. Kormos, your proposal has been defeated. I'd now ask for any further questions or comments on section 5.

Mr. Kormos: I am amazed that the government has now basically gutted its amendments to the building code. For all intents and purposes, those building code amendments are gone. The government was so cocky and so sure of itself about how this bill was the greatest thing since buttered popcorn. By golly, this was going to shut down grow-ops. All those marijuana plants were going to be buried in landfills and the problem of grow-ops was going to be solved.

So what's going on here? I've got a feeling—I'm not sure—that the government wants to throw in the towel after they deal with the amendment. I'm not sure; I'm just reading some body language. I feel the government wants to throw in the towel on this bill. How many times do these guys get to go back to the well?

One of the problems is this: what I've learned and what we've learned when we heard from some very skilful Toronto civil servants—remember the Toronto staff who were here last week? They weren't participants in the creation and the drafting of the bill. You heard how eager they were—that's what they said—for the city to have some ability to help deal with this problem. They acknowledge it's a serious problem. It's one that people

call their offices about and that they have to deal with. But they told me that they weren't consulted, that they weren't parties to the development of the legislation. I find that peculiar.

So here we go. Again, all I'm saying is that should there be a motion to adjourn, without unanimous consent I clearly can't speak to the motion to adjourn, but I think I've gone through the back door where I couldn't go through the front door. You understand my point. People are going to be looking at this process saying—right now, so the record will show, Kormos is shaking his head—"What is going on here? When are they going to get this thing right?"

The Chair: Are there any further comments?

Mrs. Sandals: We are clearly not talking about section 5. However, I would note the government has indicated that in response to listening to the concerns of some of our municipal partners, we will in fact be proposing amendments that accommodate some of those concerns. Nobody is gutting the bill, backing down, waltzing away or any of the other colourful descriptions, but we will be proposing amendments to accommodate some of the concerns we heard last week, in a spirit of listening to the public and our stakeholders.

Mr. Kormos: All I want to say is that my dear friend Dwight Duncan, the government House leader, has been anxious—Mr. Dunlop will know that; he's at House leaders' meetings—about him and his government meeting the legislative demands of their agenda. I've been doing my best to facilitate. I have. You heard me last week: I assured folks that I remain committed to Bill 28 being dealt with this morning, so that we could get it back into the House and vote for or against it.

I became skeptical over the course of the hearings. I said, "I can't support this bill." All I want the record to show, and it will, is that the government is now in effect stalling its own legislative agenda. So if they're here till July, getting questions in question period about the dismal budget that's going to be produced this afternoon, they've got nobody to blame but themselves. I'm doing my best to expedite legislation through this committee, and here's the government stalling and dragging its heels. Give your head a shake, will you?

The Chair: Any further comments or questions on section 5?

Mr. Dunlop: I'll move 5.1 when we get a chance.

The Chair: Seeing none, we'll proceed to the vote on section 5.

Those in favour of section 5? Those opposed? Section 5 is carried.

We will now move to the proposal for a new section known as section 5.1. That is on page 7, a PC motion.

Mr. Dunlop, I offer you the floor.

Mr. Dunlop: In the same spirit that Ms. Sandals, the parliamentary assistant, had mentioned with listening to the stakeholders, that's why we propose this particular motion.

I move that the bill be amended by adding the following section:

"5.1 The act is amended by adding the following section:

"Separate account for money from marijuana grow and other illegal drug production operations

"14.7(1) Despite section 14.6, money described in paragraph 1 or 2 of subsection 14.6(1) that is forfeited or paid as a fine pursuant to a conviction in relation to a marijuana grow operation or other illegal drug production operation or that is the proceeds of the sale or other disposition of property of or related to a marijuana grow operation or other illegal drug production operation shall be deposited in a separate interest-bearing account in the consolidated revenue fund.

"Same

"(2) For the purpose of the Financial Administration Act, money deposited under subsection (1) shall be deemed to be money paid to Ontario for a special purpose.

"Same

"(3) The Minister of Finance may make payments out of the account described in subsection (1) for the purpose of law enforcement and the administration of criminal justice in relation to marijuana grow operations and other illegal drug production operations, including payment to municipalities of compensation for the costs, including the costs of specialized training and equipment, incurred by them in relation to marijuana grow operations and other illegal drug production operations.

"Definitions

"(4) In this section,

"'illegal drug production operation' means a lab for the illegal production of methamphetamine, ecstasy or marijuana or for the extraction of cannabis resin;

"'marijuana grow operation' means an operation for the illegal growing of marijuana."

We took that, feeling that it allows the municipalities to be reimbursed, including costs related to training and equipment.

The Chair: Thank you, Mr. Dunlop, for your section 5.1 elaboration. If there are comments—Mr. Kormos.

Mr. Kormos: I'm concerned, once again, about the lack of precision around the definitions in this amendment. However, I'm supportive of the spirit of the amendment, because we heard from Bruce Miller, amongst others, of the inadequacy of police resources within any given municipal police service board to effectively investigate and then prosecute drug operations. This is an effort to direct some of the proceeds of crime/penalties back in a dedicated way to funding those services.

Having said that, I'm no more a fan of the principle of saying, "Well, you've got to use the fines to fund the service." That's like saying we've got to rely upon lotteries to fund health care, for instance. It can be used as an argument to undermine stable, ongoing funding, and that's a problem.

But with respect to the spirit of the amendment, I support it and I encourage other members to as well.

The Chair: Any further comments?

0930

Mrs. Sandals: We're not going to support this amendment because it's problematic in a couple of ways. It's setting up a special-purpose account, and the problem is twofold. First of all, drug cases are federally prosecuted under the Controlled Drugs and Substances Act. As a result of that, setting up a special-purpose account provincially, while we could certainly set up an account, would have no practical effect because the fines that are paid in that instance in fact go to the federal government because these crimes are federally prosecuted. So the act of setting up this account would result in an account into which no money would flow, which would seem to be not a good thing.

However, there is a system in place to accept federally collected shared proceeds of crime with Ontario. There is a memorandum of understanding that has been signed by the province and Canada to deposit these proceeds of crime into another special-purpose account which already exists and which has to do with proceeds of crime. So the proposed amendment would actually run contrary to that MOU which already exists between the province of Ontario and the federal government. We would see this as problematic in that it creates an account but I don't think the account functions in the way in which the opposition was expecting it to operate, and we see no point in setting up an account that isn't going to achieve the intended purpose.

Mr. Kormos: I heard Ms. Sandals, but I draw her attention to section 5 of her bill and the amendment, being a new 14.6(1)2: "money provided to the Attorney General." Clearly there is contemplation of money provided to the Attorney General or the government that was paid as a fine.

All I'm saying is that this is smart, anticipatory legislation, because even your bill anticipates monies flowing to the Attorney General or the government, rather than somehow being exclusively federal. But I think it's clear that you're not going to vote for the amendment in any event.

Mrs. Sandals: I believe those other sections of the bill deal with the money that does currently flow to the Attorney General, to the crown of Ontario, as opposed to, in this case, where the money clearly flows federally, so there's no purpose to the exercise.

The Chair: Any further comments with reference to section 5.1?

Seeing none, we'll proceed to the vote.

Those in favour of section 5.1? Those opposed? I declare section 5.1 lost.

I'd ask, since there are no proposed amendments for the next group, for block consideration of sections 6 to 12.

Mr. Kormos: One moment. Are they supposed to happen now?

Mrs. Sandals: I would suggest that we do section 6, perhaps, because—

Interjection.

Mrs. Sandals: Mr. Kormos would seem to be anxious to leave, so I will accommodate him and move that we adjourn.

Mr. Kormos: On a point of order, Mr. Chair: I came here to work this morning. I agreed to come here at 9 so that we could get this thing wrapped up, as Mr. Dunlop suggested, before we went into the lock-up for the budget. Now I've got the parliamentary assistant moving adjournment of the committee. These people just don't want to work.

Mrs. Sandals: On a point of order, Mr. Chair: This is not a debatable motion.

The Chair: We move to the consideration of sections 6 to 12 in block consideration. If there are specific—

Mrs. Sandals: I would move that we adjourn.

The Chair: I have a motion from the floor for adjournment.

Mr. Kormos: Recorded vote.

The Chair: A recorded vote.

Ayes

Brownell, Delaney, Racco, Sandals.

Nays

Dunlop, Kormos.

The Chair: I declare the meeting adjourned.

The committee adjourned at 0935.

CONTENTS

Wednesday 11 May 2005

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Président
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr. Michael A. Brown (Algoma–Manitoulin L)
Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)
Mr. Kevin Daniel Flynn (Oakville L)
Mr. Frank Klees (Oak Ridges PC)
Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)
Mr. Mario G. Racco (Thornhill L)
Mrs. Elizabeth Witmer (Kitchener–Waterloo PC)

Substitutions / Membres remplaçants
Mr. Garfield Dunlop (Simcoe North / Simcoe-Nord PC)
Mrs. Liz Sandals (Guelph–Wellington L)

Also taking part / Autres participants et participantes

Clerk / Greffier
Mr. Katch Koch

Staff / Personnel
Ms. Susan Klein, legislative counsel

JP-30

ISSN 1710-9442

Legislative Assembly of Ontario

First Session, 38th Parliament

Assemblée législative de l'Ontario

Première session, 38e législature

Official Report of Debates (Hansard)

Wednesday 1 June 2005

Journal des débats (Hansard)

Mercredi 1er juin 2005

Standing committee on justice policy

Law Enforcement and Forfeited Property Management Statute Law Amendment Act, 2005

Comité permanent de la justice

Loi de 2005 modifiant des lois en ce qui concerne l'exécution de la loi et l'administration des biens confisqués

Chair: Shafiq Qaadri
Clerk: Katch Koch

Président : Shafiq Qaadri
Greffier : Katch Koch

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Wednesday 1 June 2005

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Mercredi 1er juin 2005

The committee met at 1005 in room 228.

SUBCOMMITTEE REPORT

The Chair (Mr. Shafiq Qaadri): Good morning, committee members, ladies and gentlemen. I call the meeting of the standing committee on justice policy to order to resume clause-by-clause consideration of Projet de loi 128, Loi modifiant diverses lois en ce qui concerne les pouvoirs d'exécution, les pénalités et l'administration des biens confisqués ou pouvant être confisqués au profit de la Couronne du chef de l'Ontario par suite d'activités de crime organisé et de culture de marijuana ainsi que d'autres activités illégales.

We have a subcommittee report, and I would invite Mr. Brownell to read that into the record.

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh): Thank you, Mr. Chair.

Mr. Peter Kormos (Niagara Centre): In French.

Mr. Brownell: No, it won't be in French. Sorry.

Mr. Kormos: You're not running for leadership?

Mr. Brownell: No, I'm not.

I would like to move the report of the subcommittee.

Your subcommittee on committee business met on Monday, May 16, 2005, and recommends the following with respect to Bill 128, An Act to amend various Acts with respect to enforcement powers, penalties and the management of property forfeited, or that may be forfeited, to the Crown in right of Ontario as a result of organized crime, marijuana growing and other unlawful activities:

(1) That the committee meet for the purpose of resuming clause-by-clause consideration of the bill on Wednesday, June 1, 2005, at 10 a.m.

(2) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any preliminary arrangements to facilitate the committee's proceedings.

The Chair: Are there any comments or questions regarding the subcommittee report? Seeing none, we'll proceed to the next item. All those in favour? The subcommittee report is carried.

LAW ENFORCEMENT AND FORFEITED PROPERTY MANAGEMENT STATUTE LAW AMENDMENT ACT, 2005

LOI DE 2005 MODIFIANT DES LOIS EN CE QUI CONCERNE L'EXÉCUTION DE LA LOI ET L'ADMINISTRATION DES BIENS CONFISQUÉS

Consideration of Bill 128, An Act to amend various Acts with respect to enforcement powers, penalties and the management of property forfeited, or that may be forfeited, to the Crown in right of Ontario as a result of organized crime, marijuana growing and other unlawful activities / Projet de loi 128, Loi modifiant diverses lois en ce qui concerne les pouvoirs d'exécution, les pénalités et l'administration des biens confisqués ou pouvant être confisqués au profit de la Couronne du chef de l'Ontario par suite d'activités de crime organisé et de culture de marijuana ainsi que d'autres activités illégales.

The Chair: I would also like to inform the committee that a number of additional amendments were received by the clerk and they have been distributed. Just to call your attention to them, they are labelled 9b, 10a and 20a, and should any committee members require, there are full copies of all amendments on the desk here.

I would also advise the committee that prior to adjournment on May 11, 2005, we had, as you will recall, completed section 5.1 of the bill, and we will now start with section 6 of the bill and beyond.

Mr. Kormos: If I may suggest, subject to other persons' comments, that you may proceed with sections 6 through 11.

The Chair: All right. Do I have consent for that? Just to repeat, Mr. Kormos is asking for block consideration of sections 6 to 11.

Mr. Kormos: I'm not asking; I'm merely suggesting.

Mrs. Liz Sandals (Guelph–Wellington): He's agreeing, and I think that's a wonderful thing to agree to.

The Chair: Shall sections 6 to 11 carry? Carried.

We now move to consideration of section 12.

Mr. Kormos: If I may, there's a Conservative motion labelled number 8, which, in the absence of the critic for the moment, I'm going to ask for unanimous consent, on

his behalf, that it be held down until he arrives to move it.

The Chair: I appreciate your comments, but just to advise you, Mr. Kormos, we're actually considering section 12, which is anterior to the PC motion.

Mr. Kormos: I'm sorry?

The Chair: We're considering section 12; the PC motion is for section 12.1.

Mr. Kormos: Yes, which is why I'm asking for unanimous consent now, as a precautionary note, so that we don't rush through. I'm asking for unanimous consent that, in the event Mr. Dunlop is not here to move his motion number 8, it be held down.

The Chair: Fair enough.

Mrs. Sandals: I think it's part of the FPPA, and if we want to defer further consideration of the FPPA until Mr. Dunlop arrives, that would be fine. His 12.1 amends the FPPA; our 12.1 amends something else.

The Chair: So just to be clear, we have unanimous consent to allow Mr. Dunlop to re-propose his section 12.1 amendment. Correct?

Mr. Kormos: For all intents and purposes. To move it out of order—not out of order, but to move it not in sequence.

Mrs. Sandals: Exactly.

The Chair: Do we have consent for this? Agreed.

Now we'll move to section 12. Are there any questions, comments or proposals for section 12?

1010

Mrs. Sandals: Can we do 12 before we deal with Mr. Dunlop's amendment, which adds to section 30.1, when section 12 is section 30 of the FPPA? I don't know, procedurally.

The Chair: I'm advised that that is actually a new section—section 12.1. As I say, just to clarify for the committee, we're now considering the section before 12.1, which is section 12.

Mrs. Sandals: That's fine.

The Chair: All those in favour? Any opposed? Carried.

We'll now move to consideration of section 12.1, the government motion. I would invite a member of the government to—

Mr. Kormos: On a point of order, Mr. Chair: I'm giving notice, having received notice of this motion, that I'll be asking you to rule it out of order once it's moved.

The Chair: I'm advised that the motion has to be proposed before I can actually rule it out of order.

Mr. Kormos: That's why I'm giving you notice, having received notice, that I'll be asking the Chair to have it ruled out of order, which gives the government the opportunity to withdraw it rather than have it ruled out of order.

Mrs. Sandals: I will be proposing the motion that is labelled 9b in your package. I will not be moving the ones labelled 9 or 9a, just so everybody is on the same page here. So if you would look at the one that is labelled 9b, that is the one that we will be dealing with.

The Chair: If I may, just to be clear, the motions on pages 9 and 9a are not being entered into the record of this committee, therefore they do not need to be addressed by this committee, and then you will proceed to 9b.

Mrs. Sandals: Exactly. So I am proceeding to 9b, if I may.

The Chair: Yes, please.

Mrs. Sandals: I move that the bill be amended by adding the following section:

"12.1 The Municipal Act, 2001 is amended by adding the following section:

"'Inspection of buildings containing marijuana grow operations

"'431.1(1) If the clerk of a local municipality is notified in writing by a police force that a building located on land in the local municipality contained a marijuana grow operation, the local municipality shall ensure that an inspection of the building is conducted within a reasonable time after the clerk has been notified.

"'Persons who may conduct inspection

"'(2) An inspection referred to in subsection (1) may be conducted by,

"'(a) a bylaw enforcement officer of any municipality or of any local board of any municipality; or

"'(b) an officer, employee or agent of any municipality or of any local board of any municipality whose responsibilities include the enforcement of a bylaw, an act or a regulation under an act.

"'Nature of inspection

"'(3) The requirement in subsection (1) for an inspection is for an inspection that includes entering upon the land and into the building.

"'Powers to conduct inspection

"'(4) The inspection shall be conducted pursuant to the powers of entry and inspection that the person conducting the inspection otherwise has under law, but only to the extent that the person conducting the inspection is able to do so.

"'Action to be taken

"'(5) Upon conclusion of the inspection, the person who conducted the inspection shall take whatever actions he or she is authorized by law to take in order to make the building safe and otherwise protect the public.

"'Definition

"'(6) In this section,

"'"police force" means a municipal police force, the Ontario Provincial Police or the Royal Canadian Mounted Police.'"

The Chair: Do we have any questions or comments?

Mr. Kormos: On a point of order, Mr. Chair: I ask the Chair to rule it out of order. It does not amend the amendments to the Municipal Act that are proposed in the bill.

The Chair: I'm advised both by the clerk of the committee as well as legislative counsel that it is in order. Are there any further questions or comments on 9b?

Mrs. Sandals: May I speak to this?

The Chair: Please.

Mrs. Sandals: This motion does a number of things. First and foremost, as I think Mr. Kormos has noted, we have moved some language that we deleted in the last section from the building code and, in listening to a number of our presenters, have moved it to the Municipal Act. The reasons for this are as follows:

First of all, it results in the clerk of a local municipality being notified by the police force. This is in response to those building officials who were concerned that they might not always be the appropriate person to be informed. This will require that the clerk be informed. This would give the municipality the flexibility, depending on the local municipal organization, to determine the proper person to carry out the inspection.

It requires the notification to the clerk to be in writing, which was not clearly defined in the previous version.

It confirms that the inspection is done if the building contained—past tense, as opposed to "contains," present tense—a grow-op, the intent here being that it's clearly understood that the police would complete their investigation and make the building safe to the degree that it's safe for inspection.

It would allow the inspection to be carried out by an outside agency, because in some cases in a small municipality, it might be another agency under contract to the small municipality. Again, it gives the flexibility.

It also clarifies that the inspection is subject to the existing powers of entry and inspection; that is, we are not defining new powers of warrantless entry, as has been read into the bill in some cases. We are clarifying that this is subject to the existing powers which exist in law for these various municipal officials. However, I would like to note that we are maintaining the essential components of the original building code language, which is that the municipality shall be responsible for conducting an inspection and, if the building is found to be unsafe as a result of that inspection, the official shall take whatever action is required to make the building safe and otherwise protect the public.

The Chair: Are there any further comments or questions on 9b? Seeing none—

Mr. Kormos: Recorded vote, and a 20-minute recess, pursuant to the standing orders.

The Chair: Thank you, Mr. Kormos. The committee is recessed for 20 minutes.

The committee recessed from 1016 to 1030.

The Chair: Members of the committee, we resume. We now move immediately to a recorded vote on section 12.1.

Ayes

Brown, Brownell, Delaney, Dunlop, McNeely, Sandals.

Nays

Kormos.

The Chair: Section carried.

With the unanimous consent given earlier, we'll now move to Mr. Dunlop with his proposal for section 12.1, page 8.

Mr. Garfield Dunlop (Simcoe North): I'm sorry that I came in late. I thought the meeting actually started at 10:30, from the list I had. I guess the second advisory had come out for 10, and I'm sorry about that.

I understand that this will likely be ruled out of order, but—

Mr. Kormos: Don't do that, Garfield.

Mr. Dunlop: OK.

I move that the bill be amended by adding the following section:

"12.1 The act is amended by adding the following section:

"'Proceeds of fines

"'30.1 If an offence under section 28, 29 or 30 has been committed within a municipality, the proceeds of a fine imposed under that section shall be paid to the treasurer of that municipality, and section 2 of the Administration of Justice Act and section 4 of the Fines and Forfeitures Act do not apply in respect of the fine.'"

The Chair: Ruling by the Chair: I advise committee members that I will rule this amendment inadmissible, as it proposes the direct allocation of public funds under the new section. The motion before the committee is characterized as a money-bill motion. Pursuant to standing order 56, any motion that proposes to direct the allocation of public funds shall be proposed only by a minister of the crown. I therefore rule this motion out of order, so there will be no further questions, comments or debate on that particular proposal.

I will now move to consideration of the full section. Shall section 12.1 carry? Carried.

We'll now move to consideration of a new section, section 12.2.

Mr. Kormos: Wait a minute. What do you mean, "Shall section 12.1 carry?"

Mrs. Sandals: I think we were reaffirming what we just did a minute ago.

Mr. Kormos: There was a recorded vote; you created 12.1; you ruled the Tory motion out of order, however regrettably—

The Chair: We had the amendment that was proposed on page 9b, from the government.

Mr. Kormos: We voted on that. We had a recorded vote.

Mr. Bob Delaney (Mississauga West): I think it was considered the equivalent of suspenders and a belt.

Mr. Kormos: That was a new section. We had a recorded vote on that.

Mrs. Sandals: I think what Mr. Kormos is getting at is that the 12.1 that we were just dealing with was an amendment to the Fire Protection and Prevention Act, as opposed to the—

Mr. Kormos: That didn't go to a vote, because it was ruled out of order.

Mrs. Sandals: Exactly. So I would tend to concur with Mr. Kormos that the 12.1 vote we already had was adequate.

Mr. Kormos: I was just starting to worry, Mrs. Sandals.

The Chair: Thank you, Mr. Kormos. We'll now move to consideration of—

Mr. Kormos: So that last vote was null.

Mrs. Sandals: Agreed.

Mr. Delaney: Redundant.

The Chair: Fine, a redundant vote.

Mr. Kormos: That's a novel parliamentary term.

The Chair: Now we move to consideration of section 12.2, another new section. The first proposal is from the PC side: section 12.2, page 10.

Mr. Dunlop: I move that the bill be amended by adding the following section:

"12.2 The Municipal Act, 2001 is amended by adding the following section:

"'Marijuana grow and other illegal drug production operations

"'431.1(1) An official designated by a municipality may enter upon land and into a building at any reasonable time without a warrant for the purpose of inspecting a building if the municipality has been notified by a police force that the building contains a marijuana grow operation or other illegal drug production operation.

"'Inspection

"'(2) The inspection authorized by subsection (1) must be carried out within a reasonable time after the municipality has been notified as described in that subsection.

"'Same

"'(3) The municipality may designate, for the purposes of carrying out an inspection under this section, any municipal official who is appointed for the purpose of enforcing municipal bylaws, acts or regulations under acts.

"'Training

"'(4) Every municipality shall provide training and equipment to its officials who may be required to enter and inspect a building that contains a marijuana grow operation or other illegal drug production operation.

"'Lien

"'(5) If a marijuana grow operation or other illegal drug production operation is in a municipality, the municipality shall have a lien on the land for the costs described in subsection (5) and the amount shall have priority lien status as described in section 1 of the Municipal Act, 2001.

"'Where operation is in lower-tier municipality

"'(6) If the marijuana grow operation or other illegal drug production operation is located in a lower-tier municipality and both the lower-tier and upper-tier municipalities appoint officials for the purpose of enforcing municipal bylaws, acts or regulations under acts, the notice referred to in subsection (1) shall be given in writing to the head of both the upper-tier and local-tier municipalities.

"'Rental property, landlord registries

"'(7) A municipality may establish and maintain a rental property registry or a landlord registry, or both, that,

"'(a) lists every property that contained a marijuana grow operation or other illegal drug production operation; and

"'(b) includes such other information that the municipality specifies in the bylaw establishing the registry.

"'Owner, landlord has duty of due diligence

"'(8) Every owner and lessor of real property shall make reasonable efforts to ensure that the property does not contain a marijuana grow operation or other illegal drug production operation.

"'Duty to inform prospective tenants, purchasers

"'(9) The owner of property that contained a marijuana grow operation or other illegal drug production operation must not sell or lease the property without advising the prospective purchaser or lessee that the property contained such an operation.

"'Limitation

"'(10) Subsection (9) applies only to the first sale or lease of the property after it ceased to contain a marijuana grow operation or other illegal drug production operation.

"'Protection from personal liability

"'(11) No action or other proceeding for damages shall be instituted against a municipality or any employee or official of a municipality for any act done in good faith in the performance or intended performance of any duty under this section or in the exercise or in the intended exercise of any power under this section or for any neglect or default in the performance or exercise in good faith of any such duty or power.

"'Regulations

"'(12) The Lieutenant Governor in Council may make regulations,

"'(a) prescribing the training and equipment to be provided to municipal officials under subsection (4);

"'(b) prescribing safety standards to be observed by municipal officials who enter buildings containing a marijuana grow operation or other illegal drug production operation; and

"'(c) governing the sharing of information with police forces about marijuana grow operations and other illegal drug production operations.

"'Application

"'(13) This section applies to marijuana grow operations and other illegal drug production operations that are located on any class of property prescribed under section 7 of the Assessment Act.

"'Definitions

"'(14) In this section,

"'"illegal drug production operation" means a lab for the illegal production of methamphetamine, ecstasy or marijuana or for the extraction of cannabis resin;

"'"marijuana grow operation" means an operation for the illegal growing of marijuana;

"'"police force" means a municipal police force, the Ontario Provincial Police or the Royal Canadian Mounted Police.'"

The Chair: Thank you, Mr. Dunlop. Are there any further questions or comments on this proposal?

Mr. Kormos: This is an interesting amendment. It's the first time that we've seen an effort to define "marijuana grow operation," although I'm sure you, Chair, would look at that definition and regard it as somewhat tautological and therefore of marginal value, because we still don't know, and the government hasn't come forward with a definition of a marijuana grow operation. Is that some kid growing one potted pot, so to speak, or two or three? Or is it something, if this isn't criminal legislation—and the government has gone to great lengths to make sure they don't paint it as criminal legislation, for the obvious reasons. So this isn't about enforcing the federal statute against cultivating marijuana; it's about the building code.

1040

Is it only going to be by inference that a marijuana grow operation is a grow operation of such magnitude as to reasonably impact on the structure of the building? Because if it is, it should say so—do you know what I'm saying, Ms. Sandals?—as compared to two potted plants under some grow lights in the basement or in the attic or, heck, down where I come from, in the front window, more often than not—not any given neighbourhood, but from time to time as you're canvassing. That's problem number one, although I do commend Mr. Dunlop for recognizing the need for a definition. You've defined it, but to no great value.

In terms of drug labs—and again, we don't have the expertise with us any more. I know methamphetamine was referred to; ecstasy was referred to. I don't know if people are still making LSD, for instance, whether that's done in domestic labs, whether that's a product that has currency out there. Mr. Brown may be of assistance. Mr. Delaney may be helpful in this regard. Lord knows, Mr. McNeely may be able to provide some insight into the currency of things like LSD. He may well. So why are we restricting the definition to that?

I do have some concerns—and I'd ask Mr. Dunlop, if he cares to, because we talked about this—about the duty of a landlord. There were some submissions made, "Oh, landlords have got to accept responsibility." I read you the letter from a woman down in Port Colborne, a senior citizen, and we all know these types of folks, people who have worked hard, accumulated a couple of units somewhere in their community and use the rental income to subsidize their pension. These are not mega-landlords. They're not the big corporate landlords. These are, quite frankly, the landlords we always have problems responding to when we're talking about part IV of the Landlord and Tenant Act, which is written more likely for the big corporate landlords than it is for the small mom-and-pop or, quite frankly, the widow who rents the upstairs of her house to tenants.

So what kind of onus are you putting on landlords, and what type of inappropriate onus, without defining "marijuana grow operation"? Should it be the landlord's duty to accept responsibility for that definition, and what is it that you expect the landlord to do? Again, I'm not blaming you or criticizing you, because these were submissions that were made to the committee that caused me concern when they were first made.

Finally, and we didn't hear from any real estate agent types in response to this particular issue, or real estate lawyers, there's the business of notifying a purchaser that the place housed an illegal drug or marijuana grow operation. I suspect—and I don't know a whole lot about this—that when lawyers now acting on real estate deals do requisitions from the vendor, one of the questions they ask is whether or not this was used as an illegal grow operation. That would seem to be due diligence on the part of a real estate lawyer.

I'm concerned because right now a lawyer has a responsibility to do that on behalf of his or her client in a real estate deal, for instance, and the sky's the limit as to what he or she can requisition, but you're curtailing it after the first sale. So I regret that you're in fact allowing a vendor who purchased a marijuana grow operation building, probably at a reduced rate if in fact it caused the structural damage that one would maintain, not to have to disclose it to a subsequent purchaser. He flips it, doubling or tripling the price of the property because it's in a good neighbourhood, like the one you live in perhaps, and yet you've relieved him of the responsibility to notify a subsequent purchaser. And I put to you that you may well have relieved him of the responsibility to reply to a requisition; in other words, a letter from a purchaser's lawyer saying, "Has this ever been used for a marijuana grow operation?" If you read the statute, the vendor of the marijuana grow operation unit isn't obliged to notify. Does that mean the purchaser's lawyer is not permitted to request? I don't know.

I appreciate the motion and its intent to respond to issues raised by participants in the hearings. I know the Conservative Party, with its long tradition of less government, less red tape and its commitment to civil liberties, and I appreciate that this is perhaps an aberration and not the norm, but I cannot support your motion, with regret.

The Chair: Thank you, Mr. Kormos. Any further questions or comments?

Mr. Delaney: As a point of clarification for Mr. Kormos: In describing the place where he came from earlier in his remarks and referring to a process of visiting homes, could this be characterized as a door-to-door cannabis?

Mr. Kormos: That's very good, Mr. Delaney.

The Chair: Thank you, Mr. Delaney. Any further questions or comments?

Mr. Kormos: That was off the cuff.

Mr. Delaney: Actually, it was Mike's.

Mr. Kormos: Well, it was stolen, but off the cuff.

The Chair: Mrs. Sandals, please proceed.

Mrs. Sandals: We will in fact be opposing the amendment. If I could quickly just mention some of the reasons—

Mr. Kormos: Oh, come on, Mrs. Sandals, I did all the heavy lifting.

Mrs. Sandals: Well, in response to Mr. Kormos's remarks, I would just like to point out that the way we have structured the legislation, there will be orders registered against the building in order to make the building safe, and they will be attached to the building, not the owner. So, in fact, we have addressed the problem that Mr. Kormos seems to have expressed some concern about in terms of having a first sale and then having the duty to disclose go away.

Just to note that in subsection (1), we're talking about warrantless entry, which, as we pointed out, we are not introducing, so we are opposed to that.

I believe we've already taken care of subsections (2) and (3).

The issue in subsection (5) around the lien: The issue of priority lien status has actually some opposition from the municipalities that are concerned about various people registering priority liens and interfering with their ability to debenture.

Subsection (6) is interesting. Mr. Dunlop has identified a legitimate concern here with some of the confusion around when to notify lower tier and upper tier.

We would have some concern with the landlord registry business: number one, whether it appropriately belongs in this act or the Tenant Protection Act, and just to note that there is an ongoing review under the Municipal Act that is looking at the issue of landlord registries.

Under subsection (13), "Application," just to note that we are not interested in extending this bill beyond marijuana grow-ops. The consultation on the bill was specifically around marijuana grow-ops. In particular, we would have some concerns that some of the issues around other drugs may be more environmental issues and probably drag in a number of other pieces of legislation that we haven't countenanced including at this point.

We will be opposing this amendment.

The Chair: Any further comments or questions?

Mr. Dunlop: Thank you very much, Mr. Chair, and my colleagues on the committee. I just want to say that the intent of the amendment was to try, as Mr. Kormos has mentioned, to address a number of the concerns made by organizations like the Association of Municipalities of Ontario. We've had a fair amount of consultation with them.

I'm disappointed that the government would not, in some way, try to add other illegal drug production operations to the bill, because in almost all cases, particularly from our law enforcement stakeholders, they had asked for that. I've talked to people from the drug enforcement division of the metro police services and folks from the Ontario Association of Chiefs of Police. Almost everyone I've talked to has felt that that is an area that this bill could easily be expanded upon. I really don't buy the argument that it wasn't part of the consultation, because when I'm talking to the chiefs of police and drug enforcement agencies, they say the bill should include that. I'm disappointed, from that perspective, that the government wouldn't want to carry that forward and look for another area. Any of the chemical drug houses should be subject to the same rules and regulations as the marijuana grow operations, because, as Mr. Kormos has said, it's a very vague definition to begin with.

1050

I'm not going to say to you today that I'm not supporting the legislation, because I think every step we make in that direction is positive. But I'd like to see our legislation be as complete as possible when we're going through a process like this.

The Chair: Are there any further comments, questions or debates regarding this motion? Seeing none, we'll now proceed to consideration of this motion. All those in favour? All those opposed? Motion defeated.

We'll now move to consideration of section 12.2 and the PC motion on page 10a. Mr. Dunlop?

Mr. Dunlop: I hope this addresses the concerns that Mrs. Sandals brought up a few moments ago.

I move that the bill be amended by adding the following section:

"12.2 The act is amended by adding the following section:

"'Where marijuana grow operation is in a lower-tier municipality

"'431.2(1) If the clerk of a local municipality that is a lower-tier municipality is notified under subsection 431.1(1) that a building located on land in the lower-tier municipality contained a marijuana grow operation, the lower-tier municipality shall, if in its opinion it is appropriate to do so, forward a copy of the notice referred to in subsection 431.1(1) to the clerk of the upper-tier municipality of which the lower-tier municipality forms a part.

"'Same

"'(2) Upon the clerk of the upper-tier municipality being notified under subsection (1), the obligation under subsection 431.1(1) to ensure that an inspection of the building is conducted becomes the obligation of both the lower-tier municipality and the upper-tier municipality.'"

The Chair: Any questions or debate or comments?

Mr. Kormos: This was in response to what submission?

Mr. Dunlop: This is a motion in case the previous motion didn't pass.

Mr. Kormos: I'm from down in Niagara. I want to find one of your motions to support and perhaps encourage the government members to support.

Mr. Dunlop: The government was supportive of where operations are in a lower-tier municipality.

Mr. Kormos: OK, I'm going to support this motion.

Mrs. Sandals: Good. Get with the program.

Mr. Kormos: Mr. Dunlop has been introducing long, long, long motions. I want to encourage him to introduce short ones, because there are more long ones. If the government members will take the signal here, they'll support this and discourage the lengthy amendments.

The Chair: Thank you for rewarding good behaviour. Are there any further comments or questions?

Mrs. Sandals: I would just like to thank Mr. Dunlop for bringing this amendment forward. As we noted, we thought this was one of the redeeming values that was in the long version, so I'm glad to see that Mr. Dunlop has tabled the short version with this useful addition.

I think the problem that is being identified here is that when you have county governments or district governments, it often happens that it's not well defined whether it's the small, rural, lower-tier municipality or the larger upper-tier municipality that actually has the capacity to carry out the responsibility. So this gives the lower-tier municipality, if it is the municipality that is notified, the capacity to deal with the upper-tier municipality, which may well be the municipality that has the capacity to carry out the obligation.

So we're quite happy to support Mr. Dunlop's motion. This is, we believe, a useful addition to the bill.

The Chair: If there are no further questions or comments, we'll now move to the consideration of the motion. All those in favour? All those opposed? Motion carried.

With the committee's consent, we can move to block consideration of sections 13 and 14. Do I have consent for that?

Mrs. Sandals: I'm just noting that in the version I've got—and maybe it's not all versions—there seems to be a typo in the title of section 14. Is that in everybody's? Where it should say "Recounting," I've got "Oecounting." That will automatically be taken care of?

Ms. Susan Klein: That will be fixed.

Mrs. Sandals: Thank you. In that case, 13 and 14 as a block is fine.

The Chair: All those in favour of sections 13 and 14? Opposed? Sections 13 and 14 carry.

We'll now move to consideration of section 15 and the subsection referred to on page 11. Mrs. Sandals?

Mrs. Sandals: I move that subparagraph 2 v of subsection 5(1) of the Prohibiting Profiting from Recounting Crimes Act, 2002, as set out in subsection 15(1) of the bill, be struck out and the following substituted:

"v. an order to sever or partition any interest in the property or to require any interest in the property to be sold or otherwise disposed of, and for all or part of the proceeds of the severance, partition, sale or other disposition to be paid to the crown in right of Ontario as compensation for its costs incurred in preserving, managing or disposing of the property and in enforcing or complying with any other order made under this subsection in respect of the property."

I am going to move this same amendment four times as we come across it. The reason for this is that the subsection, as originally drafted, had the unintended result of allowing the Attorney General to sell a person's property prior to forfeiture in order to obtain payment of its legal costs incurred in obtaining a preservation order. Since it was never the intent of the Attorney General to be able to do this, this subsection is being amended.

The Chair: Any further comments or questions?

Mr. Kormos: I need some help, Mrs. Sandals. You've got to point out what change—and perhaps staff can help in this regard—

Mrs. Sandals: I would defer to staff, because I'm obviously not a lawyer.

The Chair: Ministry staff are welcome to approach the committee. Please identify yourself, and you'll be on the record, obviously.

Mr. Jeff Simser: My apologies; I haven't got my black-lined version.

The Chair: Please identify yourself.

Mr. Simser: I'm sorry. I'm Jeff Simser. I'm legal director of the civil remedies project at the Ministry of the Attorney General.

In the original bill—I apologize; I'm just trying to find the exact language here.

Mr. Kormos: That's what I was doing, as well.

Mr. Simser: As you track through the original bill, it's "for its costs incurred in obtaining an order under this subsection."

So the concern was that there would be a sale on an interlocutory basis, the unintended consequence being that the Attorney General would recover its own costs at that point in the proceeding, which wouldn't be appropriate.

Mr. Kormos: One of the participants found that particularly offensive; I think there was a written submission.

Mr. Simser: Mr. Diamond; yes, that's correct.

Mr. Kormos: "For its costs incurred in obtaining an order under this subsection," and that's an order for the preservation, management or disposition. Obviously, the preservation and management would be the ones of—because we're not talking about an order of disposition. That would be an order of forfeiture/disposition.

Let's look at your amendment—"as compensation for its costs incurred in preserving, managing or disposing of the property"—

Mr. Simser: If I could use an example, if there is a trainload of melons—and this actually happened in Arizona—the only way to preserve the value of that property for all the litigants is to sell it right away. Conceptually, under the amended section, the net cost of going to an auction would be recovered at that point, but the costs of our lawyers at the Ministry of the Attorney General would not.

1100

Mr. Kormos: I'm told that marijuana keeps very well; that's what I'm told.

Mr. Simser: It's destroyed by Health Canada, sir.

Mr. Kormos: I was thinking of the melons reference, because the melons would rot.

Mr. Simser: Absolutely; that's the concept—or one of the concepts.

Mr. Kormos: But here in the amendment, "as compensation for its costs incurred in preserving, managing"—right? So we're still talking about costs incurred in preserving and managing.

Mr. Simser: Correct. So keeping the melons cold, getting them to the auction, paying the auctioneer: Those costs would be recovered. In other words, it's a net value that goes in, and the net value is then—

Mr. Kormos: So what you're excluding is the cost of getting the order. OK. Gotcha.

Mrs. Sandals: So it's the AG legal costs that are being excluded.

Mr. Simser: That's correct.

Mr. Kormos: Wouldn't it be far more productive for the ministry to simply sell the marijuana and use those proceeds? Then everybody would be paid. I don't know. Just trying to think outside the box here.

The Chair: Mr. Kormos, is that a formal motion?

Mr. Kormos: No, it's just a consideration.

The Chair: Thank you, Mr. Simser, for your clarification. Are there any further comments or questions on this subsection 15(1), page 11? Seeing none, we'll now move to the vote. All those in favour? All those opposed? Carried.

Shall section 15, as amended, carry? Carried.

We now move to consideration of section 16, subsection 16(1), page 12.

Mrs. Sandals: I'm assuming that I need to read this all over again?

The Chair: Yes, Ms. Sandals, for the record.

Mrs. Sandals: I move that subparagraph 2 v of subsection 6(2) of the Prohibiting Profiting from Recounting Crimes Act, 2002, as set out in subsection 16(1) of the bill, be struck out and the following substituted:

"v. an order to sever or partition any interest in the property or to require any interest in the property to be sold or otherwise disposed of, and for all or part of the proceeds of the severance, partition, sale or other disposition to be paid to the crown in right of Ontario as compensation for its costs incurred in preserving, managing or disposing of the property and in enforcing or complying with any other order made under this subsection in respect of the property."

The Chair: Any comments or questions? Seeing none, we'll now move to the vote. All those in favour of subsection 16(1), page 12? Any opposed? Carried.

Shall section 16, as amended, carry? Carried.

We now move to consideration of section 17. Seeing as there are no motions, may we proceed to the vote? Do I have consent from the committee to do so?

Mrs. Sandals: This one, the PC section 17, has been withdrawn?

The Chair: Section 17.1, new section.

Mrs. Sandals: Oh, sorry.

The Chair: Shall section 17 carry? Any opposed? Carried.

We now move to consideration of section 17.1, PC motion page 13.

Mr. Dunlop: I move that that the bill be amended by adding the following section:

"17.1 The act is amended by adding the following section:

"'Separate account for money from marijuana grow and other illegal drug production operations

"'9.0.1(1) Despite section 9, money described in subsection 9(1) that is forfeited or paid to the crown in right of Ontario that is related to a marijuana grow operation or other illegal drug production operation shall be deposited in a separate interest-bearing account in the consolidated revenue fund.

"'Same

"'(2) For the purpose of the Financial Administration Act, money deposited under subsection (1) shall be deemed to be money paid to Ontario for a special purpose.

"'Same

"'(3) The Minister of Finance may make payments out of the account described in subsection (1) for the purpose of law enforcement and the administration of criminal justice in relation to marijuana grow operations and other illegal drug production operations, including payment to municipalities of compensation for the costs, including the costs of specialized training and equipment, incurred by them in relation to marijuana grow operations and other illegal drug production operations.

"'Definitions

"'(4) In this section,

"'"illegal drug production operation" means a lab for the illegal production of'"—what's that again?

The Chair: Methamphetamine.

Mr. Dunlop: —"'methamphetamine, ecstasy or marijuana or for the extraction of cannabis resin;'"—see, I'm not familiar with all these drugs—

"'"marijuana grow operation" means an operation for the illegal growing of marijuana.'"

The Chair: Again, I advise the committee on the admissibility of this amendment, as it proposes to direct the allocation of public funds into the new section. The motion before this committee can be characterized as a money bill motion and, pursuant to standing order 56, any motion that proposes to direct the allocation of public funds shall be proposed only by a minister of the crown. I therefore rule this motion out of order, which concludes our consideration of section 17.1.

May I ask for consent from the committee to consider as a block sections 18, 19 and 20, seeing there are no proposed motions? Do I have consent? Agreed.

Shall sections 18, 19 and 20 carry? Any opposed? Carried.

We now move to consideration of subsection 21(1), government motion, page 14.

Mrs. Sandals: Same motion. I move that paragraph 5 of subsection 4(1) of the Remedies for Organized Crime and Other Unlawful Activities Act, 2001, as set out in subsection 21(1) of the bill, be struck out and the following substituted:

"5. An order to sever or partition any interest in the property or to require any interest in the property to be sold or otherwise disposed of, and for all or part of the proceeds of the severance, partition, sale or other disposition to be paid to the crown in right of Ontario as

compensation for its costs incurred in preserving, managing or disposing of the property and in enforcing or complying with any other order made under this subsection in respect of the property."

The Chair: Any further comments on this motion? Seeing none, we'll proceed to the vote. All those in favour? All those opposed? This motion is carried.

Shall section 21, as amended, carry? Any opposed? Seeing none, section 21 is carried.

We'll now move to the consideration of section 22. Seeing that there are no motions proposed, with consent, we'll move to the vote. Shall section 22 carry? Any opposed? Carried.

We'll now move to consideration of section 22.1, new section, PC motion, page 15.

Mr. Dunlop: I move that the bill be amended by adding the following section:

"22.1 The act is amended by adding the following section:

"'Separate account for money from marijuana grow and other illegal drug production operations

"'6.1(1) Despite section 6, money described in subsection 6(1) that is forfeited to the crown in right of Ontario that is related to a marijuana grow operation or other illegal drug production operation shall be deposited in a separate interest-bearing account in the consolidated revenue fund.

"'Same

"'(2) For the purpose of the Financial Administration Act, money deposited under subsection (1) shall be deemed to be money paid to Ontario for a special purpose.

"'Same

"'(3) The Minister of Finance may make payments out of the account described in subsection (1) for the purpose of law enforcement and the administration of criminal justice in relation to marijuana grow operations and other illegal drug production operations, including payment to municipalities of compensation for the costs, including the costs of specialized training and equipment, incurred by them in relation to marijuana grow operations and other illegal drug production operations.

"'Definitions

"'(4) In this section,

"'"illegal drug production operation" means a lab for the illegal production of methamphetamine, ecstasy or marijuana or for the extraction of cannabis resin;

"'"marijuana grow operation" means an operation for the illegal growing of marijuana.'"

The Chair: Again, I'd like to rule on the admissibility of this amendment that proposes to direct the allocation of public funds under the new section. The motion before the committee can be characterized as a money bill motion and, pursuant to standing order 56, any motion that proposes to direct the allocation of public funds shall be proposed only by a minister of the crown. I therefore rule this motion out of order, and there will be no further consideration of this motion.

We'll now move to consideration of section 23. Seeing as there are no proposed motions, we may proceed to the vote, with consent. All those in favour of section 23? Any opposed? Section 23 is carried.

We now move to consideration of subsection 24(1), government motion, page 16.

1110

Mrs. Sandals: I move that paragraph 5 of subsection 9(1) of the Remedies for Organized Crime and Other Unlawful Activities Act, 2001, as set out in subsection 24(1) of the bill, be struck out and the following substituted:

"5. An order to sever or partition any interest in the property or to require any interest in the property to be sold or otherwise disposed of, and for all or part of the proceeds of the severance, partition, sale or other disposition to be paid to the crown in right of Ontario as compensation for its costs incurred in preserving, managing or disposing of the property and in enforcing or complying with any other order made under this subsection in respect of the property."

The Chair: Any further comments or questions? Seeing none, we'll proceed to the vote. All those in favour? Any opposed? Subsection 24(1) is carried.

Shall section 24, as amended, carry? Any opposed? Section 24, as amended, is carried.

Section 25: Seeing as there are no proposed motions, with consent, we'll proceed to the vote. Shall section 25 carry? Section 25 carries.

We'll now move to consideration of new section 25.1, PC motion, page 17.

Mr. Dunlop: I move that the bill be amended by adding the following section:

"Separate account for money from marijuana grow and other illegal drug production operations

"11.1(1) Despite section 11, money described in subsection 11(1) that is forfeited to the crown in right of Ontario that is related to a marijuana grow operation or other illegal drug production operation shall be deposited in a separate interest-bearing account in the consolidated revenue fund.

"Same

"(2) For the purpose of the Financial Administration Act, money deposited under subsection (1) shall be deemed to be money paid to Ontario for a special purpose.

"Same

"(3) The Minister of Finance may make payments out of the account described in subsection (1) for the purpose of law enforcement and the administration of criminal justice in relation to marijuana grow operations and other illegal drug production operations, including payment to municipalities of compensation for the costs, including the costs of specialized training and equipment, incurred by them in relation to marijuana grow operations and other illegal drug production operations.

"Definitions

"(4) In this section,

"'illegal drug production operation' means a lab for the illegal production of methamphetamine, ecstasy or marijuana or for the extraction of cannabis resin;

"'marijuana grow operation' means an operation for the illegal growing of marijuana."

The Chair: Thank you, Mr. Dunlop. I advise the committee again on the admissibility of this amendment, which proposes to direct the allocation of public funds under the new section. The motion for the committee can be characterized as a money-bill motion and, pursuant to standing order 56, any motion that proposes to direct the allocation of public funds shall be proposed only by a minister of the crown. I therefore rule this motion out of order, and there will be no further consideration of section 25.1, the current motion.

We now move to consideration of section 26. Seeing as there are no proposed motions, with consent, if we may proceed to the vote. All those in favour of section 26? Any opposed? Section 26 carries.

Consideration of section 26.1, PC motion, page 18.

Mr. Dunlop: I move that the bill be amended by adding the following section:

"Separate account for money from marijuana grow and other illegal drug production operations

"15.0.1(1) Despite section 15, money described in subsection 15(1) that is received by the crown in right of Ontario that is related to a marijuana grow operation or other illegal drug production operation shall be deposited in a separate interest-bearing account in the consolidated revenue fund.

"Same

"(2) For the purpose of the Financial Administration Act, money deposited under subsection (1) shall be deemed to be money paid to Ontario for a special purpose.

"Same

"(3) The Minister of Finance may make payments out of the account described in subsection (1) for the purpose of law enforcement and the administration of criminal justice in relation to marijuana grow operations and other illegal drug production operations, including payment to municipalities of compensation for the costs, including the costs of specialized training and equipment, incurred by them in relation to marijuana grow operations and other illegal drug production operations.

"Definitions

"(4) In this section,

"'illegal drug production operation' means a lab for the illegal production of methamphetamine, ecstasy or marijuana or for the extraction of cannabis resin;

"'marijuana grow operation' means an operation for the illegal growing of marijuana."

The Chair: Thank you, Mr. Dunlop. I rule on the admissibility of this amendment, which proposes to direct the allocation of public funds under the new section. The motion before the committee can be characterized as a money-bill motion and, pursuant to standing order 56, any motion that proposes to direct the allocation of public funds shall be proposed only by a minister of the crown. I therefore rule this motion out of order, and there will be no further consideration of section 26.1.

May I ask for consent from the committee to do block consideration of sections 27 to 30, seeing as there are no motions proposed?

Proceeding to the vote, shall sections 27 to 30, inclusive, carry? Carried, sections 27 to 30, inclusive.

We will now move to consideration of section 31, government motion, page 19, Ms. Sandals.

Mrs. Sandals: Yes, if I could actually—just a minute. I've lost track of the motions here. I will not be moving 19 or 20. I believe 20a probably captures most accurately what we've done.

The Chair: Have you concluded, Ms. Sandals?

Mrs. Sandals: Yes. Actually, I wouldn't have been doing 20 anyway. But I won't be moving 19, assuming that Mr. Dunlop will be moving 20a.

The Chair: All right. Mr. Dunlop, then.

Mr. Dunlop: I'm sorry; you're not moving 19?

The Chair: Just to clarify, the government is not proposing what's on page 19. You now have the floor, presumably to propose 20a.

Mr. Dunlop: OK. Thank you. I move that section 31 of the bill be struck out and the following substituted:

"Commencement

"31(1) Subject to subsection (2), this act comes into force on the day it receives royal assent.

"Same

"(2) Sections 4, 5, 6, 7, 12.1 and 12.2 come into force on a day to be named by proclamation of the Lieutenant Governor."

The Chair: Thank you, Mr. Dunlop. Just to be clear, that was 20a.

Mr. Dunlop: 20a, yes. I didn't move 20 either.

The Chair: If there are any further questions, comments or debates—

Mrs. Sandals: Can I just clarify to make sure we heard the reading correctly? It was 4, 5, 6—

Mr. Dunlop: 7.

Mrs. Sandals: —7, 12.1 and 12.2. But it was 5, not 5.1.

Mr. Dunlop: Yes, 5. Only 5, yes.

Mrs. Sandals: OK, great. Agreed.

The Chair: Thank you. Are there any further comments or questions? Seeing none, we'll move to the vote.

Shall this particular motion, 20a, carry? Any opposed? None. It's carried.

Shall section 31, as amended, carry? Carried.

Now consideration of section 32. Seeing as there are no motions, we may proceed to the vote, with consent.

Shall section 32—

Mr. Kormos: Subject to debate.

The Chair: Yes, Mr. Kormos. Any further comments or questions on section 32?

Mr. Kormos: No, thank you, Chair.

The Chair: Seeing none, we'll proceed to the vote.

Shall section 32 carry? Section 32 carries.

We'll now move to consideration of the title. There is a motion before the committee regarding the title.

Mr. Dunlop: Mr. Chair, I'm going to be withdrawing that motion, please.

The Chair: Thank you. As Mr. Dunlop has withdrawn, I move to the vote.

Shall the title, as written, carry? The title carries.

Shall Bill 128, as amended, carry?

Interjection.

The Chair: Yes, Mr. Kormos?

Mr. Kormos: I appreciate in particular the amendment number 9b of the government, which purports to address some of the concerns that any number of parties raised very early on in the committee proceedings, and I certainly joined with those parties in expressing concern. I appreciate that there is a restoration of the need for a warrant in those circumstances where a warrant is required. The prospect of warrantless search and entry by a municipal official when, let's say, the police don't even have it is objectionable to most people.

I still have some concerns about two particular things, which is why I don't think this committee is finished its work yet, although I suspect that the majority of the committee will disagree with me. One is the absence of any definition of "marijuana grow operation." Again, when you have the mandatory requirement—which I'll address as well—in what will be the new section 431.1 of the Municipal Act that a municipality shall cause an inspection—so it's mandatory—you've got the police force, then, without any statutory assistance, deciding what constitutes or constituted a marijuana grow operation.

1120

Surely this government does not want somebody growing two plants in two pots under a grow light in their basement to constitute a marijuana grow operation. Surely the concern should be about grow operations that are of sufficient size to pose the risk to the structure and building that we've either heard about in the committee from community members in their neighbourhoods or read about in that great marijuana grow-op in Mr. Tascona's riding, in the town of Barrie, in the former beer factory, or the sort of grow-ops that we hear about with the mould—again, I can only rely on what we're told—and then the wiring and holes drilled through.

Look, let's be fair: We're hearing the most extraordinary stories. I suspect, without knowing—well, heck, if every marijuana grow operation had all this bad wiring, there would be fires far greater in number than what we're experiencing now. Clearly, they're not all of this huge magnitude where people are jumping the meter and the fuse boxes and the main fuses as well. So I really am concerned about the lack of definition here. It should cause the police some concern.

I'm similarly concerned about the vagueness of the reference of police advising—and not the local police force; any police force—because that was raised as well in the course of commentary on this. In other words, a North Bay police force can advise that a St. Catharines building contained a grow operation. So it could be on the basis of information—do you understand what I'm saying?—an informant, for instance, who said, "Oh yeah, so-and-so was growing pot over on Rykert Street in St. Catharines back last December." Somebody gets picked up in North Bay on some, I don't know, break-and-enter charge and the police lean on him to give them information. So then the North Bay police write a letter to the regional municipality of Niagara police force in the city of St. Catharines saying, "A marijuana grow operation was contained in building X, Y or Z." Then that puts an onus on the building inspector to do an inspection and, presumably, to get a warrant in cases where warrants are required.

That type of lack of validity and continuity and proximity of information wouldn't be very useful in most other types of judicial or quasi-judicial proceedings. I think I know what the government is trying to do. I'd like the bill to say that where the police have busted, raided and seized—and I'd like a definition—marijuana plants in sufficient numbers to have constituted, let's say, a commercial operation where the magnitude of the operation puts the physical structure at risk because of the nature of the beast, then they shall so advise. But it doesn't say that. So the police don't even have to have made an arrest. The police don't even have to have conducted an investigation. This raises some real potential, quite frankly, for even, let's say, inadvertent harassment of innocent people.

Again, somebody gets picked up for a B and E in Sudbury; is leaned on by the police to give them information so that they reduce the charge to theft or whatever; he gives the police information about a grow operation at Garfield Dunlop's house—listen carefully, Mr. D., do you have teenage children?

Mr. Dunlop: No.

Mr. Kormos: Well, consider yourself fortunate, then.

Mr. Dunlop: I've got a wife who likes gardening, but she doesn't grow marijuana.

Mr. Kormos: God, you've just turned in your own spouse. What kind of a person are you?

Look, all that has to happen is that somebody has to advise the police, under whatever circumstances, that there was marijuana growing in Garfield Dunlop's house, and that police force can then send that information by letter to the building inspector in your community, and they show up—

Mr. Dunlop: He's my cousin, by the way.

Mr. Kormos: He may have better reason to conduct the inspection than you thought, then. That building inspector then shows up, if it's a sophisticated community, with all the hazard equipment—because we heard about that, how building inspectors don't want to go—with all these spacesuits and the masks—

Interjection.

Mr. Kormos: No, I'm serious. Think about it: There is no standard here by which the information has to be tested, or no reasonable hurdle that it has to overcome. This is very problematic. I would be quite pleased if it

were—as, in my view, it should be—discretionary on the part of the building inspector; in other words, the building inspector will assess the information. If the building inspector calls the police force and says, "What do you mean, there's a marijuana grow-op?" and the guy says, "Yes, we busted this teenage kid with two plants," the building inspector could say, "Please don't bother me."

In other words, I would not quarrel with information of sufficient grade being adequate to enable, by statute, the building inspector to get a warrant to inspect; I wouldn't quarrel with that. But this doesn't even commit the building inspector, hard-pressed in most municipalities—they're busy people; they're hard-pressed to do the work that they're called upon to do now. It doesn't give them any discretion. If I were a building inspector, in view of what we know and have been told about the respective health dangers inherent in a major marijuana grow operation, you're also talking about considerable expense in terms of getting the team together and going through all the protocols of the gloves and the masks and the equipment and so on. I am very, very concerned about this.

At this point, I will not support passage of this bill by this committee in its totality, as amended. Again, I give credit for the amendment contained on page 9b by the government, but I still think you missed the mark; I still think you missed the bull's eye, with all due respect. Nobody disagrees with the intent of the exercise here. Everybody agrees with municipalities' eagerness to be players in controlling what everybody agrees is an epidemic of grow houses. Obviously, one of the solutions is to control and regulate the stuff and get the illegal players out of the business, but that's not the debate here and now. I still think you've missed the mark. If the bill passes by committee, I want an opportunity to reflect on new section 431.1 and the absence of definitions a little further and, quite frankly, to consult.

This is one of those instances where, had this type of amendment happened after first reading, it would have been a great opportunity for the bill, after second reading, to go back even for a couple of days of committee hearings so that some of those same municipal officials and other persons who expressed concern about the original very first sections of the bill could have commented on the new 431.1.

Those are my comments, Chair. Thank you kindly.

Mrs. Sandals: Just briefly to respond: When we're dealing with the municipal inspection, the municipal authority to make orders to make a building safe, to render it safe for public safety purposes, I think we can rely on some discretion on the part of the police. Given that this is about making sure that the building is rendered safe, they would clearly destroy their relationship with the local municipality if they were to call the local building inspector—or the local clerk, as it stands now—every time they find two pot plants. So while I suppose it is possible that that would be allowed within the legislation, I would think that not only are building inspectors very busy people, but so are police officers, in my observation, and filling out written reports to clerks of municipalities about two pot plants, for a wild goose chase, which clearly has nothing to do with public endangerment to a building and whether or not the building is safe, I would think would be a very bad use of police time. Given that they are quite pressed in terms of their duties that they have to carry out, which you have often mentioned in your speeches, I think we can rely on the police not to aggravate building officials with two pot plants.

The Chair: Are there any further comments or questions? Seeing none—

Mr. Kormos: Recorded vote.

The Chair: Recorded vote. Shall Bill 128, as amended, carry?

Ayes

Brown, Brownell, Delaney, Dunlop, McNeely, Sandals.

Nays

Kormos.

The Chair: Bill 128, as amended, carries.

Shall I report the bill, as amended, to the House?

Mr. Kormos: Recorded vote.

The Chair: Recorded vote again.

Ayes

Brown, Brownell, Delaney, Dunlop, McNeely, Sandals.

Nays

Kormos.

The Chair: The bill will be reported, as amended, to the House.

Seeing no further business before the committee, this committee stands adjourned.

The committee adjourned at 1131.

CONTENTS

Wednesday 1 June 2005

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Président
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr. Michael A. Brown (Algoma–Manitoulin L)
Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)
Mr. Kevin Daniel Flynn (Oakville L)
Mr. Frank Klees (Oak Ridges PC)
Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)
Mr. Mario G. Racco (Thornhill L)
Mrs. Elizabeth Witmer (Kitchener–Waterloo PC)

Substitutions / Membres remplaçants
Mr. Garfield Dunlop (Simcoe North / Simcoe-Nord PC)
Mr. Phil McNeely (Ottawa–Orléans L)
Mrs. Liz Sandals (Guelph–Wellington L)

Also taking part / Autres participants et participantes
Mr. Jeff Simser, legal director, civil remedies project, Ministry of the Attorney General

Clerk / Greffier
Mr. Katch Koch

Staff / Personnel
Ms. Susan Klein, legislative counsel

JP-31

ISSN 1710-9442

Legislative Assembly
of Ontario

First Session, 38th Parliament

Assemblée législative
de l'Ontario

Première session, 38e législature

Official Report of Debates (Hansard)

Wednesday 14 September 2005

Journal des débats (Hansard)

Mercredi 14 septembre 2005

Standing committee on justice policy

Comité permanent de la justice

Private Security and Investigative Services Act, 2005

Loi de 2005 sur les services privés de sécurité et d'enquête

Chair: Shafiq Qaadri
Clerk: Katch Koch

Président : Shafiq Qaadri
Greffier : Katch Koch

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Wednesday 14 September 2005

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Mercredi 14 septembre 2005

The committee met at 0901 in room 228.

SUBCOMMITTEE REPORTS

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, I'd like to call the meeting of the standing committee on justice policy to order. As you will know, we are here to begin public hearings on Bill 159, An Act to revise the Private Investigators and Security Guards Act and to make a consequential amendment to the Licence Appeal Tribunal Act, 1999.

I'd invite, with your permission, Ms. Sandals to move adoption of the subcommittee reports.

Mrs. Liz Sandals (Guelph–Wellington): Your subcommittee met on Wednesday, July 6, first of all, and recommends the following with respect to Bill 159, An Act to revise the Private Investigators and Security Guards Act and to make a consequential amendment to the Licence Appeal Tribunal Act, 1999:

(1) That the committee meet for the purpose of holding public hearings in Toronto on Wednesday, September 14, 2005, in Ottawa on Thursday, September 15, 2005, in Sault Ste. Marie on Wednesday, September 21, 2005, and in London on Thursday, September 22, 2005. The order of locations may change depending on travel logistics.

(2) That the clerk of the committee, as directed by the Chair, advertise information regarding the hearings in all English and French daily and weekly newspapers in Ontario for one day during the week of August 22, 2005, and for one day during the week of September 5, 2005.

(3) That the advertisement in the English-language newspapers be placed in both English and French formats.

(4) That the clerk of the committee, as directed by the Chair, also post information regarding the hearings on the Ontario parliamentary channel and on the Internet as soon as possible.

(5) That the deadline for receipt of requests to appear be Thursday, September 8, 2005, at 5 p.m.

(6) That the clerk of the committee, in consultation with the Chair, be authorized to schedule at their discretion all interested presenters with input from the subcommittee members as required.

(7) That the subcommittee members receive an interim list of presenters requesting to appear before the committee in mid-August and at the end of August and the full list as of the deadline on September 8, 2005.

(8) That the length of presentations for all witnesses be 15 minutes. At the discretion of the clerk, in consultation with the Chair, the length of time for presentations may vary depending on time available and requests to appear.

(9) That the ministry be invited to provide a technical briefing to the committee at the beginning of public hearings in Toronto for a maximum of one half-hour, including time for questions and answers from committee members.

(10) That the deadline for written submissions be Friday, September 23, 2005, at 5 p.m.

(11) That the research officer provide a background paper on the distinction between private police and security guards in other jurisdictions by Monday, August 29, 2005, and provide a summary of witness presentations before the commencement of clause-by-clause.

(12) That the administrative deadline for submitting amendments be Wednesday, September 28, 2005, at 5 p.m.

(13) That clause-by-clause consideration of the bill be scheduled for Monday, October 3, 2005.

(14) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any preliminary arrangements to facilitate the committee's proceedings.

Also, your subcommittee on committee business met on Friday, September 9, 2005, and recommends the following with respect to Bill 159, An Act to revise the Private Investigators and Security Guards Act and to make a consequential amendment to the Licence Appeal Tribunal Act, 1999. You will be grateful that there are not 14 recommendations in this one:

(1) That the committee cancel the public hearings tentatively scheduled for Ottawa and Sault Ste. Marie due to the limited number of requests.

(2) That the clerk of the committee inquire about the possibility of accommodating the Ottawa and Sault Ste. Marie presenters by conference call in London on September 22, 2005.

(3) That, if required, the Chair be authorized, on a case-by-case basis, to reimburse any expenses incurred by the Ottawa and Sault Ste. Marie presenters who choose to travel to London.

(4) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the adoption of the

report of the subcommittee, to commence making any preliminary arrangements to facilitate the committee's proceedings.

Those are the two reports, Mr. Chair.

The Chair: Thank you, Ms. Sandals. We'll now proceed to the vote for the adoption. I will require two votes, for both of these particular subcommittee reports. All those in—

Mr. Kevin Daniel Flynn (Oakville): Good morning.

The Chair: Do I have a point of order?

Mr. Tim Peterson (Mississauga South): He said, "Good morning."

The Chair: I see. Thank you. A hearty good morning to you, Mr. Flynn, as well.

I would now like to move to the vote for the adoption of the subcommittee report, the first part. All those opposed? None. All those in favour? Report adopted.

For part two of the subcommittee report, all those opposed? All those in favour? The second part is also adopted.

PRIVATE SECURITY AND INVESTIGATIVE SERVICES ACT, 2005

LOI DE 2005 SUR LES SERVICES PRIVES DE SECURITE ET D'ENQUETE

Consideration of Bill 159, An Act to revise the Private Investigators and Security Guards Act and to make a consequential amendment to the Licence Appeal Tribunal Act, 1999 / Projet de loi 159, Loi révisant la Loi sur les enquêteurs privés et les gardiens et apportant une modification corrélative à la Loi de 1999 sur le Tribunal d'appel en matière de permis.

MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES

The Chair: We will now move expeditiously to the technical briefing offered by ministry staff from the Ministry of Community Safety and Correctional Services, led by Mr. Herberman and your other colleagues. I would invite you to please present yourselves and, if you might, introduce yourselves to Hansard for the purposes of recording. Please begin. We have you until approximately 9:30, about 25 minutes.

Mr. Peter Kormos (Niagara Centre): On a point of order, Mr. Chair: Why don't all the staff come and sit at the table? I'll move over to make room.

The Chair: Thank you, Mr. Kormos. Should they wish to avail themselves of your continued generosity, I'm sure they will.

Please begin.

Mr. Jon Herberman: Good morning. My name is Jon Herberman. I'm the registrar and director of the private investigators and security guards branch at the Ministry of Community Safety and Correctional Services.

Mr. Dudley Cordell: My name is Dudley Cordell. I'm with the legal services branch at the Ministry of Community Safety and Correctional Services.

Mr. Herberman: I'd like to very briefly give you some context for the bill that's before you today and then discuss the key proposed changes in the new act.

Provincial legislation governing private investigators and security guards has not changed since it was introduced in 1966. The number of licensed guards and PIs in 1966-67 was about 4,000. Today we have 31,000 licensed individuals in the province.

The act itself lacks any defined criteria regarding training or competence for these individuals. Our licensing process at the moment consists of a criminal records check. We have individuals who are licensed to protect people and/or property without any assessment as to whether or not they have the required skills or qualifications.

In addition to the 31,000 licensed individuals, we estimate that there are at least another 20,000 security practitioners who are not licensed, who are currently exempt from our act.

There have been several recent events, provincially and nationally, that have highlighted the need for change. In the spring of last year, there was a coroner's inquest into the death of an individual named Patrick Shand, who tragically died while being apprehended during a shoplifting incident. The coroner's jury made 22 recommendations, almost all of which are addressed fully in the proposed changes to the act.

We have had two private members' bills over the last two years also recommending changes to the act.

In December 2003, the Ontario Human Rights Commission issued a report on racial profiling. Although that report was directed largely at the policing sector, they did have a recommendation in there for private security as well.

For the last two and a half years, the Law Commission of Canada has engaged in dialogue across the country basically on defining the roles and examining the blurring of the roles between public police and private security.

I would say as well that British Columbia, Alberta, Manitoba, Quebec and Nova Scotia, all of those jurisdictions, are at various stages of changing their legislation and are all proposing changes that are very similar to what is being proposed here in Ontario.

0910

In June 2003, the ministry released a discussion paper. We sent that discussion paper to over 600 stakeholders, outlining at a high level the suggested reforms and requesting written feedback on those changes. We received a very healthy response to that, and the written responses we received helped to inform the changes that the Honourable Monte Kwinter put forward upon first reading in December 2004.

In February and March of this year, we again went into consultations with all of our affected stakeholders. That included associations from the private security

industry; the private investigation industry and their associations; police associations; retail, hotel and motel associations; the banking and other industry associations; the hospital sector; the college and university sector; the insurance sector; unions—just about anybody who might be affected by this.

In May, the act received second reading and we established, also in May, an advisory committee composed of key stakeholder groups to provide expert advice and guidance to the ministry in the development of the new regulations under the proposed act.

The key reforms—I'll speak about each of these in a bit more detail in a moment—are mandatory licensing for everybody, licence portability, a new licence appeals process, a new licence public complaints process, and the setting of standards through regulations for training and testing, for code of conduct, for uniforms, equipment and vehicles, and minimum comprehensive liability insurance rates. We will also be increasing the fines and enforcement measures.

First, mandatory licensing and licence portability: Under the existing act, as I mentioned earlier, we have an estimated 20,000 individuals who are exempt from being licensed. These include largely the Corps of Commissionaires and all in-house security. That means that if you work for a particular company or organization, whether it's at Canada's Wonderland, the Bay, IBM, and you're employed by them as a security practitioner or a PI, you are exempt from the current licensing regime. We want to change that and have everybody who is employed in those areas, anybody who's involved in the protection of people and/or property, to be properly trained to minimum standards, and licensed.

We want to also introduce the idea of licence portability. At the moment, an individual cannot apply for a licence on his or her own behalf; they can only do it through a licensed agency. This effectively means that they can only work for one company. So even if they're getting only 15 or 20 hours of work a week, they can't go and work somewhere else to make a decent living. It also means that if they want to terminate from company A and go to work for company B, they have to go through a termination process, re-submit an application through a new company and pay the licensing fee again. So licence portability will do away with all of that.

We are also going to register, not license, the in-house companies. So the registration will be a very straightforward process. We wanted to keep it as straightforward and easy as possible. There will be a nominal fee for those companies, simply for us to recover the cost of the registration. The difference between registration and licensing a company is that the people who provide third-party services who hire their guards out to others are licensed by us and will continue to be licensed by us. When an agency requests a licence or puts in an application for a licence, we go through a very comprehensive background check. We have an investigative unit that is comprised of seconded OPP officers. We do full criminal background checks. We do full financial background checks. We visit the place of business. We review business plans for the licensed agencies. We will do none of those things for registered companies. The registered companies' primary business is not the provision of security; they are manufacturers, retailers, whatever it is they're doing. They have, in addition to their primary business, their own in-house security.

We are going to change the licence appeals process. At the moment, if an individual doesn't like the outcome of a hearing that either myself or the deputy registrar will do into their licence, they can appeal that to the deputy minister. We are changing that so that if there is an appeal, it will go to the Licence Appeal Tribunal, which is part of the Ministry of Government Services. The Licence Appeal Tribunal is an independent, quasi-judicial administrative tribunal which receives appeals, conducts hearings, resolves disputes, and renders decisions concerning compensation claims and licensing activities. They currently do this under 22 other provincial statutes. The tribunal will be able to either uphold the registrar's decision, vary it, grant or restore a licence, or impose additional conditions on that licence. If the individual is still not satisfied after a hearing before LAT, they have recourse to judicial review.

We are also going to be instituting a formal public complaints process for the first time. This was one of the key recommendations of the Shand inquest as well. All public complaints will come to the registrar. There can only be two types of complaints: a complaint against a code of conduct—we'll talk about that in a moment—or a complaint alleging a violation of the Private Security and Investigative Services Act. If it's a complaint regarding a code of conduct, then if the registrar doesn't deal with it, it will be assigned to a facilitator, and the facilitator will make recommendations, which can become conditions on the individual's licence. Those recommendations could be for things like anger management training, racial sensitivity training, things of that nature. If the complaint is related to a violation or a contravention of the act, I will assign that to our investigative unit.

We are going to have six main areas for regulation development. These are training and testing, code of conduct, uniform, equipment and vehicle standards, and minimum insurance requirements.

Training and testing: At the moment, there is no legislated training for security practitioners or PIs in the province. It's a huge gap. So part of what we're doing with the advisory committee that I mentioned earlier is developing regulations under these six areas. On the training side, we are looking at a program that's currently offered by the Canadian General Standards Board. It's a 40-hour course, well received and well respected across the country. There's no need for us to start from zero on this. So we will use the CGSB course as a point of departure and, in consultation with the advisory committee, come up with our own training program.

We have a range of individuals who currently offer training, but, as I said, there are no standards. The training ranges from really first-rate to quite terrible, no

more than a rip-off for individuals who think they are going to get training and end up paying money and not being able to get a job afterwards. Once we have a draft standard for the training, we will be going out to talk to other groups who deliver training—in particular, colleges of applied arts and technology, career colleges and private companies—to review the draft with them.

Perhaps there's no need to get into the specifics on the others, but I did want to mention the training.

We are also going to be increasing our fines and enforcement. We will have new fines for individuals of up to $25,000 and up to a year in jail, and for licensed entities, fines of up to $250,000 and up to a year in jail as well. The fines in the existing act were up to $50,000 and up to a year in jail, but I would remind the committee that those numbers haven't changed in 40 years.

We are also going to have a new class of inspectors who will have the authority to conduct inspections, collect and copy records, and enter business premises without a warrant. However, if in the course of their inspection they find something that they think relates to criminal wrongdoing, they will immediately leave and hand over their findings to an investigator, and an investigation will ensue.

That ends the formal presentation. We're happy to take any questions that you might have.

The Chair: Thank you, Mr. Herberman. We would now like to open the floor to the committee. We'll start with you, Mr. Kormos.

0920

Mr. Kormos: Perhaps I could just put a collection of issues forward and these folks can respond either at the end of everybody else's comments or not.

I applaud the consideration, the whole issue of response to the Shand coroner's inquest and the need for new standards. However, these are my concerns:

First, there are two types, in my view—and we're going to hear from folks and they may well elaborate on this—of private security work out there.

There is the proactive what I call quasi-policing or private policing, like in Shand, where people are expected to make arrests, where they do physical contact with suspects, with people and personnel. Clearly, in that regard, you want a very high standard to be met.

The other whole area, though, is the proverbial night watchman, night watchperson, who never interacts with the public, who simply monitors a panel and is told, "Don't try to arrest anybody. Don't get involved. Call the police." Do we want that night watchman, night watchperson—and let's understand who these people are. In many cases they are people who are going to find difficulty working in other areas of the workforce. The security industry has accommodated these people in a very unique way, in a very valuable way.

So I'm concerned about the fact that there are two approaches to security and the bill only embraces one and makes everybody adhere to the same standard. That's number one, because clearly the person must be licensed, subject to what we hear. The way I read the bill, a university kid working in the summer doing night watch duty on a construction site, being told, "Only call the police"—he or she is not going to be allowed to do that. The fellow down where I come from who has lost his job because it's deindustrialized or who has a worker's comp injury, who can do light duty like watching a panel, is not going to be able to do that. The fellow in my apartment building here in Toronto is again not going to be able to do that unless he meets these standards. And quite frankly, security guards are going to expect to be paid a hell of a lot more than they're being paid now if they are being required to attend community college programs and meet these standards as well.

I'm concerned about section 10, the criminal record issue. I appreciate that you consider—you only have an interest in prescribed criminal convictions. There's no reference, and perhaps there's been case law at the administrative level, around character, because the fact is that a person could have a lengthy history of police contact with, let's say, child molestation, yet never have been convicted. Lord love a duck. I think we have as strong an interest in making sure that person doesn't work in a security arena as anybody else, yet the statute is very, very clear, in my view. You have outlined what the requirements are: You don't have a criminal record; you meet the education requirements. Bingo, you get a licence.

The other absurdity that I mentioned early on, during first reading, I think, was section 34, the duty to identify oneself. Maybe that's just a matter of tweaking, but it struck me as bizarre. When we were kids, we used to tease the bears in department stores, right? You know, we'd figure somebody out to be a floorwalker and we'd tease the bears. The statute appears to say that if a person is doing that kind of security duty, a floorwalker in a store, plainclothes, and you go up to them and say, "Are you a security guard?" they are obligated to identify themselves and show you the bloody licence. That seems to me to be just an overly rigid application of that requirement and one that deserves tweaking.

My broader concern is that what this bill does, let's understand, is it facilitates privatized policing and enhances it. It will legitimize private policing. The PAO—I've talked to them—doesn't appear to have a concern about that, Garfield. I think they should. I certainly do, because I believe in public policing, but this facilitates private policing.

The other consideration that's first and foremost for me is that it's going to ding a whole lot of municipalities and a whole lot of smaller employers who need security but not the proactive security that's going to bust people for trespassing or for shoplifting.

Thank you, Chair.

The Chair: Thank you, Mr. Kormos. With respect, in order to make sure that all parties have time to be heard, I'm now going to move to the Liberal side.

Mr. Bob Delaney (Mississauga West): Thank you very much.

I have one question, with a brief preamble. Young people in Mississauga have complained to me that private security companies, under the guise of training for employment within the security industry, advertise openings and attract young people who are charged a very hefty fee for what is described as training. The companies frequently rent a facility at, for example, U of T or some other well-known educational institution, and after the completion of this so-called course, few attendees, if any, are offered employment.

Can you please describe, especially in light of the type of abuse I've just mentioned, how standardized training will ensure that Ontarians are protected in a uniform manner, and by what means such standardized training might be delivered.

The Chair: Please go ahead. You have the floor, Mr. Herberman, as you wish.

Mr. Herberman: OK. To respond to Mr. Kormos's comments, the first one is your concerns about the two different levels of security work: the night watchman and those who are involved perhaps in loss prevention, or who are doing work that involves much more interaction with the public, potentially physical interaction with the public.

We are proposing to have a classification system for licences, so that those who are doing the night watchman type of work would have basically what we'll call a class 1 licence. Those who are going to be involved in much more interaction with the public, and potentially physical interaction with the public in terms of shoplifting or disorderly conduct, would have perhaps a class 2 licence. A class 2 licence would be based on both additional training and experience. So we are aware of the issue and we're proposing to address it in that manner.

On the criminal records issue, we are going to define through regulation a list of criminal offences where, if you've ever been convicted of them, don't bother applying for a licence.

On the issue you were raising about someone who is a person of interest to a local police service or various police services but they've never had a conviction, there's also a section in the act that talks about some of the registrar's powers, and one of those talks about whether or not the registrar believes it is in the public interest to issue a licence, regardless of whether there is a conviction. For an individual like the one you've just described, that individual would not slip through the net.

You also raised a concern about the duty to identify yourself, particularly for floorwalkers, for loss prevention individuals. The act says that if you're holding yourself out to be a security practitioner or a private investigator, and if asked, you have to produce your licence. A loss prevention officer is not holding himself or herself out as such and would not be required to produce a licence. They're not in uniform. They are acting under cover in that store, so they wouldn't have to produce a licence.

You used another term; you raised a concern about private security in effect becoming private policing and the changes to the act legitimizing that. In short, I just want to assure you that we have public police and we have private security, and if anything, I see this act further delineating and defining the boundaries and the lines around those two things. So it was never our intention in any way to step over that boundary and take on even the lower level or allow a private security team to take on the lowest levels of policing activities. On the contrary: We were very clear that that is not going to happen.

Mr. Delaney, you were talking about problems in your riding with training, with companies offering training at sometimes very inflated prices with the promise for the potential of a job afterwards. This is an ongoing problem. However, at the moment it's a problem that we have no jurisdiction over. We do not under the existing act have any legislation, regulations or sanctions for training. So if anybody has a problem currently, who has paid money for training with the promise of a job and they don't receive a job, or they paid an inflated price for the training and the training hasn't been adequate, there's nothing under the Private Investigators and Security Guards Act that we can currently do about that. Under the proposed act, we will take on the responsibility for training and testing, and if people make fraudulent claims, then under the new act we will be able to investigate and charge them.

The Chair: Thank you, Mr. Herberman, and thank you to the deputation from the ministry. I would first of all just inform the committee that Mr. Dunlop graciously yielded his question time so that we might hear you more fully.

0930

ASSOCIATION OF PROFESSIONAL SECURITY AGENCIES

The Chair: I would now like to invite our next presenter, Mr. Joe Maher from G4S Security Services. Mr. Maher, if you might, please formally introduce yourself. If you might also just speak clearly into the microphone. There's a lot of background noise in this room.

Mr. Kormos: Chair, prior to that, perhaps Mr. Fenson could obtain the background material on the proposed regulation regarding the two classifications and the respective standards for those classifications.

The Chair: Thank you. Legislative research duly notes your request.

Mr. Maher, just to remind you, you have approximately 15 minutes. Any time that you leave remaining afterward will be shared equally amongst the various parties. Please begin.

Mr. Joe Maher: Thank you. Good morning. My name is Joe Maher. I'm the vice-president of G4S Security Services (Canada) Ltd., formerly Group 4 Falck (Canada) Ltd., and one of the founding members of APSA. I am here this morning speaking on behalf of the Association of Professional Security Agencies, known as APSA.

A little background on myself: I spent 12 years in policing with the Toronto police services. I held the rank of sergeant in that role. I spent time at CO Bick training school. I've currently been in the private security industry for 19 years and I have some 2,300 uniformed security officers in my current division. I'm an active member of APSA.

An overview of APSA: There are currently 20 member companies of APSA, with two more to be added in January of this coming year. We believe that the 20 member companies represent about 70% of the security working in Ontario. This is a representation, as Mr. Herberman mentioned, of 31,000 security officers in the province of Ontario. I will say that in my notes it says 20,000, but I'm with Mr. Herberman on 31,000 this morning.

Principally, the job of a security officer is to detect, deter and report. The people of Canada no longer are willing to take the risk of being victims of criminal acts. Thus, private security has grown dramatically over the years, with the consumer willing to pay the cost. In today's world, police services can no longer cope with the volume of incidents, and the complexity of the police services has grown, while municipal, provincial and federal government budgets are being constrained.

The growth of the security industry over the years has been driven by society choosing deterrence and prevention and immediate response to criminal acts, violation of rules, and identifying safety concerns. The role has also evolved into responding to fires and medical emergencies and arresting people found committing criminal acts. Security guards are becoming the front-line responders to serious incidents; i.e., major fires at automotive plants, shootings at community colleges, sexual assaults at shopping centres, violence in hospital emergency wards, domestic disputes in high-rise apartments and condominiums, theft from private property, safety services at theme parks, terrorist threats, lost children in shopping centres etc. Routinely, security guards are facing many of the same incidents encountered every day by police officers; however, they are limited to using only the powers granted under a citizens' rights.

To enhance and recognize the need for greater competence in the total security industry, to add professionalism and to build public confidence, we need to start by defining the composition of the security guard industry. As mentioned earlier, the industry is made up of security agencies such as Group 4S and a host of others that are attached to my report; the commissionaires; Corp II, a division of the commissionaires; and the in-house organization. It is estimated that the security agencies, our agencies, employ only about 50% to 60% of those that act as security guards in Canada.

The major issues facing the industry include the trust factor: The general public must have confidence that the people in uniform identifying themselves as security guards are of a high standard, are trustworthy and have a degree of competency.

As mentioned earlier, they must be free from criminal convictions. The opportunity for those with ill intent, with serious criminal convictions—i.e. pedophiles—and for terrorists to infiltrate the ranks of security firms is real. Given the fact that the commissionaires and the in-house operations are not regulated in Ontario—licensed with a criminal background check—there is some risk that the expected standards will not be met. Interestingly, the commissionaires, a valuable association member of APSA, has now agreed to become fully regulated and licensed.

The huge vulnerability which exists is in-house operators, where background checks are not mandatory, nor is training, as evidenced by the Patrick Shand inquest.

Mandatory training: The level of competency in the industry ranges from rock-bottom low to extremely high. It is presently driven by consumer economics and individual needs. There is no basic level of competency required in the industry. Individual companies vary in their personalized training standards, with some offering extensive training, while others offer virtually none.

There needs to be a legislated minimum level of training. The application of training standards must apply to the entire composition of the security industry; otherwise, buyers of security services driven by pure buy-cheap motives would lean to creating their own in-house program simply to save dollars, thus exposing the public to incompetent security personnel. If a minimum training standard applies only to the agency part of the industry, an unfair competitive playing field would be created, creating a sufficient disadvantage for the agencies.

Uniform appearances: It is important to establish trust and confidence, that the security guard uniform meets a standard different from the police, strong and visible enough to meet the public's expectation and professionalism. T-shirts with the word "security" embroidered on them are not acceptable to our standards. Routinely, this is what you would see at special-events occasions by in-house operators. Small children and teenagers look for visible representation of trust and competency, and rely on security to help them at times of need.

Vehicle appearances: The markings on security vehicles must be clearly distinguishable from the police. The use of exterior lights is required for safety purposes while patrolling properties during night hours; however, the words "security vehicle" must be clearly visible.

Portability of licences: The licences issued to security guards must be portable to accommodate the freedom of security guards to move to different employers as opportunities for gainful employment arise. This eases the burden of administrative paperwork within the government and agencies, improving the overall efficiency and reducing costs for both parties.

Issuance of licences: The time has come to address the serious need for electronic processing of security guard licences. The present, archaic way of transporting masses of paperwork is cumbersome, slow and inefficient. The initial cost investment by the government would lend

itself to repayment through the cost efficiencies and would move some security applicants into meaningful employment sooner.

Insurance coverage: The present requirement for insurance that must be carried by an agency is $1 million. This outdated requirement was established in 1960. Serious agency applicants and providers should carry a minimum of $10 million for protection of their clients and their workforce.

Self-regulation: In the interest of public safety and because of the lack of financial resources within the industry, we believe that the current regulatory body, the registrar through the Ministry of Community Safety and Correctional Services, should maintain its current responsibilities.

Accountability: The actions of security agencies are accountable to the client, the registrar, the employment standards commission, the Human Rights Commission, trade unions, the Workplace Safety and Insurance Board, civil litigation and shareholders of public companies and insurance companies.

It is not uncommon for security companies to lose contracts because of performance-related issues with their client companies, causing serious loss of revenue and loss of employment for security guards.

Because of the high scrutiny placed on security firms, the accountability is extraordinarily high. However, the industry members are receptive to a further, formalized approach through the ministry to build public confidence.

National standards: Serious consideration should be given to having the provincial regulatory bodies work toward national standards in licensing, uniforming and training. On this issue, the industry association should be an active participant in creating the national model.

0940

Just in summarizing, we shouldn't forget the tragedy of 9/11/2001. While the television cameras captured the heroic actions of firefighters and police officers, it was the World Trade Center security guards who were in the building and who were the first responders. While the media did not capture their work in assisting tenants, police and fire departments, their work was important and heroic; thus, the need for a competence level to be defined and established.

Could the same tragic event happen to a major city in Ontario? We hope not. However, just recently we witnessed the bombings in London and natural disasters as a result of tsunamis and hurricanes where security personnel played the vital, critical role of saving lives. Enhanced standards are no longer just a wish list but must become mandatory standards. The public is relying on the wisdom of the government to move this initiative quickly and positively to conclusion. Thank you.

The Chair: Thank you, Mr. Maher. We have a little time for efficient questions. We'll start with Mr. Dunlop, from the PC side.

Mr. Garfield Dunlop (Simcoe North): Thank you very much for being here this morning, Mr. Maher. Generally, you support this bill; that's what I'm hearing from you today.

Mr. Joe Maher: That's correct.

Mr. Dunlop: You just outlined a number of the reasons why: because of the key changes to the bill.

Mr. Joe Maher: That's correct.

Mr. Dunlop: Is there any place where you'd like to see the bill improved, or is there anything that you see a different need for?

Mr. Joe Maher: One of the things I'd want to make sure of is the standard of the trainer for the training programs. How are they going to be certified? It can be just as watered down as it is today if we don't have some strong standards for that training person who's ultimately going to be in front of the recruits, giving that training standard.

Mr. Dunlop: Thank you very much.

Mr. Kormos: We're going to be hearing from community colleges. You can count on them arguing to be the sole trainer. You make reference to in-house training in ensuring it's a sufficiently high standard. Are you suggesting there should be alternatives to licensed trainers—to wit, community colleges or private schools—such that there could be in-house training?

Mr. Joe Maher: That's what I'm suggesting, because the ministry is suggesting a 40-hour training program. I don't know if we need to go to the community colleges for that when we have private industry that could do it.

Mr. Kormos: A 40-week—

Mr. Joe Maher: I think it was 40 hours.

Mr. Kormos: No. The community colleges are going to be talking about 40 weeks.

Mr. Joe Maher: Oh, yes; it could be months. Yes.

Mr. Kormos: Is 40 hours adequate?

Mr. Joe Maher: I believe so, yes. I believe that there should be refresher training annually too. As I say, my background was policing, but I wouldn't be able to say I knew the entire Criminal Code after so many years—so a refresher at some point.

Mr. Kormos: What's the basic training at police college? Do you know?

Mr. Joe Maher: It's 16 weeks.

Interjection.

Mr. Joe Maher: Sorry, someone's saying something behind me. I may be wrong.

Interjection.

Mr. Joe Maher: Sixty days? That may be at Aylmer, and then you have to go to the—

Mr. Kormos: Twelve weeks, yes. Twelve five-day weeks.

Mr. Joe Maher: Yes.

The Chair: We'll move to the government side, should there be any questions.

Seeing none, I would like to thank you, Mr. Maher, for your testimony, your deputation today.

CENTRE FOR SECURITY TRAINING AND MANAGEMENT INC.

The Chair: I would now invite our next presenter, Mr. Norm Gardner, former councillor, I believe, who is representing the Centre for Security Training and Management.

Welcome, Mr. Gardner. Once again, to remind you, you have 15 minutes in which to present. Any remaining time will be shared equally among the parties. Please begin.

Mr. Norm Gardner: I'd like to thank you very much for inviting us here today to hear our comments. I'm certainly supportive of what I heard from Mr. Herberman. Actually, I think I can address in my little speech here some questions that have been asked by some of the members.

A little background on the organization that I represent: It was created in 1998, offering skill-training programs and job placement for those wishing a career path in the security and loss prevention industries, to those who have problems finding employment, lack self-confidence, lack education, have physical disabilities, are young and have never had a job before, or are native persons, single parents or newcomers to Canada.

The Centre for Security Training and Management has designed a four-week program with over 35 subjects in conjunction with the Canadian General Standards Board, and it has successfully trained over 2,000 persons and placed them in the job force as security guards with several security providers, because we do job placement as part of our undertaking.

Over 95% of all participants admitted into training were granted certificates and found immediate employment in the security industry. Course candidates receive training in both life skills and professional security and protective services. It is the whole-person training approach and development that provides the centre with its competitive advantage in the employment marketplace. It has allowed us to break into and succeed in one of the most highly competitive industries. Our training has proved to be more job-specific and more in tune with the requirements of the security industry than that provided by community colleges.

In the past we have successfully worked with clients of government agencies in training and job placement. As I indicated, our success rate is a 95% placement within the security and protective services industries. We have found the youth program to be a very valuable tool in helping youth reach and strive for goals which some may never have known. It has been our experience that many youths from all walks of life have been given a chance to accomplish steady work in the security field. The security guard program has had a definite impact on finding and keeping employment for persons who are economically disadvantaged. We create positive role models and opportunities for all people registered in our security programs.

A security officer, sometimes called a security guard, is an individual with special training in one or more areas, hired for reward to detect, deter and report. After all, we wear a uniform with badges or patches and sometimes carry handcuffs. Their duties may include workplace safety: adhering to the various safety regulations, emergency situations, command structure; access control to property; alarm/control panels; environmental conditions.

There are those who are in the retail environment. They work on loss control with shoplifters and attempt shrink prevention/detection of property, and sometimes this may include arrest and handcuffing techniques; parking lot monitoring/accident response; parking enforcement and issuing provincial offences notices.

In the area of corporate security, they deal with industrial espionage prevention and detection, access control, and employee theft prevention and detection.

First aid: All our students get first aid training by competent, certified emergency medical services personnel.

Security guards are also trained, as I said, in access control. This is a common function provided at client sites. They may inspect employee badges or ID to ensure that the people coming into the facility are actually supposed to be there. They log visitors in and keep track of the goings-on around the facility. They may also inspect employee belongings and containers as people leave as a theft deterrent/detection function. They may also patrol the facility parking areas as a deterrent/detection function against vandalism and theft. Your presence is, hopefully, to prevent things from happening as much as it is to observe and report if something does happen.

Security guards have to be good at noting details. They need to be able to note differences in conditions between rounds. They need to be able to notice if objects are present, absent or moved between their rounds. If there isn't supposed to be anyone in the area, then such an event would be a good clue that something or someone is afoot. They also need to notice changes in odours in a building. This could be a sign of a fire or a chemical spill, which will warrant even more scrutiny. It can also be a way to tell the officer if they are in possible danger.

The above-mentioned are current expectations of security officers across the province. The duties and training needs of officers have changed drastically since 1966, when the Private Investigators and Security Guards Act of Ontario was first introduced. I think Mr. Kormos addressed that when he talked about some people who do watchman duties compared to more professional security type of responsibilities.

Since the terrorist attacks of 9/11 in New York and the most recent in London, Spain and other parts of the world, and the natural disasters around the world, security officers have played a vital role in providing protection of property and persons.

0950

On the need to revise and amend the Private Investigators and Security Guards Act of Ontario with Bill 159: We want to talk about accountability. All security personnel, including in-house operations, should be accountable under Bill 159 to the province of Ontario. Presently, as Mr. Herberman has indicated, in-house operations are not accountable to the province because they are not licensed. Currently, in-house and contract security officers work side by side with different sets of standards, causing disadvantages. Hopefully, this will standardize uniforms, training, background checks and regulations governing all security personnel.

On the subject of uniforms: Standards for uniforms must be implemented to ensure security officers are highly visible and not mistaken for police officers. The use of T-shirts and polo shirts should be prohibited, as anyone can obtain these.

On mandatory training: All security personnel should be trained to the Canadian General Standards Board standard which was created by the federal government of Canada. This standard has been created for Canada and is a requirement to work on federal properties; that is, airports, government buildings, federal government buildings etc. This standard should be adopted by the province of Ontario as a training model. I was very pleased to hear Mr. Herberman's comments on that.

The minimum requirement is 40 hours of training for this course. This amount of time is manageable for both employers and students. The following should include handcuffing, first aid, CPR and use of force, including the legal requirements to perform their duties.

Training should be provided by third-party, arm's-length agencies not affiliated with the security providers to avoid officers being placed in the field before training has been completed. I say that because sometimes a contract may be obtained which would require the immediate need for several people, and often you might get a situation where people who are not properly trained are rushed out of a class and thrown into a situation where they really needed to be trained in order to deal with the type of event that they are being asked to work at.

Before an individual can begin a practice or be licensed as a security officer, they must be trained through a recognized Canadian General Standards Board training provider. All training must meet the new standards of the province of Ontario. All security officers should be required to requalify on a yearly basis with an eight-hour program.

The Canadian General Standards Board's examination test should be offered throughout the province by third-party providers. Currently, some licensed agencies charge $200 a day for a two-day training program, and students are never employed with these agencies. There is no job placement attached to them. There was an article by CBC in late July revealing one such agency that was training hundreds of persons and promising employment which never took place.

On the issue of portability of licences: That issue would be basically overcome by ensuring that people do get training through recognized Canadian General Standards Board training. That would overcome the issue that you brought up, Mr. Delaney.

The licence issued to the security guard must be portable to accommodate the freedom of security guards to move to different employers. However, conditions should apply: Termination notices must be provided to the province, and police checks must be completed each time the guard is hired.

The current act prohibits security guards from carrying wallet badges. Ontario's new standards should include a warrant card issued by the province, as well as a badge or ID issued by the employer that the security guard represents. Security personnel engaged in in-house loss prevention are currently issued a corporate badge or ID. This helps identify their authority as a representative of their employer.

All applicants should be issued a temporary licence to prevent delays in employment once they've completed their training, because sometimes there is a six-week delay from the time you apply for your licence to the time you get it. So you're not working, even though you've completed the course and there's a job available for you.

Presently, security guard companies can apply for and receive training to carry a PR-24 baton with a side handle. Currently, in-house security guards can carry collapsible batons on their uniform belts. All security officers should be issued standard devices to protect themselves, such as collapsible batons, where they may be used as a defensive option. Under the Occupational Health and Safety Act and Bill C-45, employees must be provided with the necessary equipment and training to ensure a safe work environment. Bill C-45 allows for companies that do not supply adequate equipment to safeguard their employees to be criminally charged.

In relation to a couple of these pieces of equipment that one type of guard may carry and another may not, the Tonfa stick, or PR-24, is currently approved for the security industry for guards who have had the appropriate training. These batons are very visible, they're two feet long, they appear intimidating, they're cumbersome to wear—loose on the belt—they have poor retention capabilities and there is a tendency to fall out of the holder when responding quickly to emergency situations.

Collapsible batons, which in-house security are allowed to carry, are very compact, they are less visible, they are not intimidating, they are easier to wear, they secure on the belt and extend to their full length with a flick of the wrist.

Several of our clients reported that their security guards have been attacked and injured while carrying out their duties, particularly in high-crime residential areas, where they had no equipment with which to defend themselves. We do recommend that body armour be provided when engaged in certain types of security work.

In conclusion, our corporation strongly recommends that changes are needed to regulate the industry and training across the province of Ontario. Many of these changes will ensure the safety of security guards and the public they protect.

The Chair: Thank you, Mr. Gardner. We have just two minutes left, and we'll begin with Mr. Dunlop.

Mr. Dunlop: I have no questions.

The Chair: Seeing no questions from the PC side, we'll move to Mr. Kormos.

Mr. Kormos: I appreciate the submission. Again, perhaps we could get some information from legislative research on the Canadian General Standards Board standard, at least a synopsis.

The issues you raise again point out my concern about the fact that not all security personnel—heck, remember the Gasworks on Yonge Street, the rock club?

Mr. Gardner: Right.

Mr. Kormos: Those bouncers were big, and when you got tired of the band, you watched the bouncers turf people. Clearly, that type of security work—and they didn't need batons—is far different from the industrial security work you're talking about: We have to be familiar with workplace health and safety and so on. I'm concerned about the fact that one standard of training may not be suitable for the variety of security work that is being performed out there.

I know we're going to hear from other parts of the entertainment industry. There's going to be an interesting submission from the Adult Entertainment Association of Canada. What do you say about the variety of work that's being done?

The Chair: You just have a minute left, Mr. Gardner.

Mr. Gardner: Sure. Our training is for people who are professionally engaged in making a living in the security industry. Most of their training, as I said, is to detect and deter, to prevent incidents from happening. So we concentrate on making them very professional in how they go about doing their duties. If someone needs help, it's not, "What are you doing here?" it's, "May I help you?" In other words, we're trying to create professional people in the industry.

The kinds of people you're talking about are not basically professional people who make a living on a day-to-day basis in the security industry. They're bouncers. Obviously, from some of the types of incidents that have taken place in some of the clubs, perhaps they need a little more professionalism there rather than just hiring people by the pound.

We realize that there's a difference in terms of the types of security that are available throughout the province.

The Chair: We'll allow one quick question from the government side.

Mrs. Sandals: You mentioned some issues around equipment, the types of batons that are used, that sort of thing. I presume that in the proposed act the regulation-making authority would allow us to work out the details of the equipment that is allowed.

Mr. Gardner: Yes. We'd like to see a little more uniformity here. If one type of security personnel is allowed to carry a certain piece of equipment that is not offensive, then we think the other side should be as well. In other words, the employers in the industry do not want to walk around and impersonate police officers. They realize that they've got a job to protect. There's a liability situation here by the owners of properties to protect the property and people on those properties, but they want to do it in the least offensive manner possible. Just like in policing, you try to build some friendships in the community in which you are working, and this is one of the ways that we think would be helpful in enabling them to do so.

The Chair: Thank you, Mr. Gardner, for your deputation, and thank you, committee, for your questions.

1000

POLICE ASSOCIATION OF ONTARIO

The Chair: I would now invite our next presenter, Mr. Bruce Miller, chief administrative officer of the Police Association of Ontario, to come forward. As you know from your many previous deputations, any time remaining will be shared equally amongst the parties. Please begin.

Mr. Bruce Miller: Thank you. My name is Bruce Miller. I'm the chief administrative officer for the Police Association of Ontario. I was also a front-line officer with the London Police Service for over 20 years prior to taking on my current responsibilities.

The Police Association of Ontario, or PAO, is a professional organization representing 30,000 police and civilian members from every municipal police association and the Ontario Provincial Police. We've included further information on our organization in our brief.

We appreciate the opportunity to address the standing committee today and would like to thank the members for their continuing efforts for safe communities. We'd also like to take the opportunity to thank MPPs Dave Levac, Mario Sergio and Garfield Dunlop, who introduced private members' bills to try to address these issues surrounding private security. Their work in this area is greatly appreciated.

We're here today to speak in favour of Bill 159. Our organization has voiced serious concerns over the lack of regulation of the private security industry. The PAO pointed to the rapid growth of what is in actuality an unregulated industry. The private security industry has experienced dramatic uncontrolled growth in the past 35 years, from 4,600 licensed private investigators and security guards in Ontario in 1967 to over 29,000 in 2003. These figures are misleading in the sense that over half the security guards in the province are currently not required to be licensed. The situation is further aggravated by the fact that governing legislation has remained virtually unchanged since it was enacted in 1966.

The PAO believes that there is a role for private security in Ontario, subject to the implementation of a

system of rigorous standards and oversight. To ensure community safety, the public must have confidence that the role of police and the role of private security are clearly defined. Members of the public need assurance that the corporate interests and profit motives of private security firms do not compromise the goal of serving the public interest.

The PAO set out its position for change in a November 2003 brief in response to consultation on this issue. That document is copied in your package for your information. The PAO's position has consistently been the following:

The PAO supports provincial legislation that sets standards for the recruitment and licensing of all individuals involved in the private security industry in Ontario. The PAO supports provincial legislation that sets standards for training all individuals involved in the private security industry. This is a matter of safety for members of the community and for private security personnel.

The PAO supports provincial legislation that would prohibit private security personnel from wearing uniforms or driving vehicles similar to those used by police personnel. Some private security firms have been known to consciously select uniforms and vehicles that imply greater authority than is the case.

The PAO supports the creation of a provincially run and legislated oversight body to be responsible for private security. Members of the public should be assured that there is a system of accountability that promotes the transparent and effective implementation of private security functions.

Finally, the PAO supports legislated provincial adequacy standards for private security.

We'd also like to note that our recommendations are supported by the recommendations of the coroner's jury in the 2004 inquest into the death of Mr. Patrick Shand. We've copied those recommendations for you in our brief.

We believe that the proposed legislation lays out a framework for accomplishing these recommendations. There is no doubt that adequate, enforceable regulations are key to effective legislation. The Ministry of Community Safety and Correctional Services has created the private security and investigative services advisory committee to assist in the development of regulations and to also provide advice and input on other matters. I represent the PAO on that committee and can advise you that we are moving forward on these issues.

I should add that a number of these issues are certainly a topic of great discussion. The PAO supports the use of graduated training for the industry. We support the introduction of a code of conduct for private security. We're very concerned by the use of weapons and the use of force by private security.

Finally, another issue that has come up is the question of licensing so-called bouncers in the restaurant, hotel and hospitality industry. Certainly we understand some of the concerns that have been raised by that industry, that this licensing may be too far-reaching, but the PAO strongly believes that those involved primarily in security in licensed establishments must be licensed and have adequate training.

The decisions made in regard to these recommendations are going to be crucial to community safety interests.

The Police Association of Ontario strongly supports the need for government to ensure that members of the private security industry are adequately trained, licensed and accountable. We also believe that the public has the right to be able to easily distinguish between police personnel and private security, and the use of look-alike vehicles and uniforms by some private security firms should be prohibited. We believe that Bill 159 can accomplish these goals and help ensure community safety and we would urge the speedy passage of legislation.

Once again, I'd like to thank you for the opportunity to be here today and certainly would be pleased to answer any questions the committee may have.

The Chair: Thank you, Mr. Miller. We have eight minutes remaining. We'll begin with Mr. Dunlop.

Mr. Dunlop: Thank you, Bruce, for once again coming to help us out with this legislation.

You made a point about enforcing the regulations, and I know that you sit on a subcommittee of this bill. Can you tell me, in your opinion, how it can most easily be enforced and what it will take to enforce the regulations. Let's say we have the speedy passage of the bill, like we're expecting, and we get the regulations in effect and proclaim the bill and all of those sorts of things. How do you see it being enforced?

Mr. Miller: Certainly through a code of conduct for both employers and employees in the industry. There can be sanctions ranging up to taking away somebody's licence or through fines.

Mr. Dunlop: When we talk about the classification system—and I'll be very brief, Mr. Chair. As we look ahead and we see, let's say, what we would call a "bouncer" today, how could you see that being enforced? The same way? Just by the code of conduct for the owners?

Mr. Miller: By the fact that these individuals are going to have to be licensed, and if their licence were removed—I think it's going to become a liability issue too, that insurance companies are going to be concerned that establishments are properly staffed. There are enforcement provisions to the Liquor Licence Act as well, in terms of pulling someone's liquor licence.

Mr. Dunlop: OK. That's fine.

The Chair: Mr. Kormos, three minutes.

Mr. Kormos: In fact, a point well made. It's interesting that the insurance industry appears not to have considered, or at least not offered to participate in the hearing. As well, I don't see any submissions—the security staff that I see carrying weapons are Brinks-type money delivery people. They carry side arms.

I'm going to focus on the use of weapons.

Mr. Miller: And they're not covered by the legislation.

Mr. Kormos: That's right. I want to focus on the use of weapons by security, because Mr. Gardner raised—I didn't know about the regulation or the standard permitting the batons, and then this flick one, the extension one. I'm not about to tell the security officer to go into a dark place and get the daylights kicked out of him by a gang or what have you. What's your position in terms of the use of weapons, the capacity to carry weapons—because a baton is a weapon—and under what circumstances etc?

1010

Mr. Miller: I guess there are a couple of issues. First of all, private security serves a different interest than policing. They serve corporate interests, while policing attempts to serve the public good. But police officers undergo a great deal of training: lengthy training beforehand, ongoing training every year in regard to the use of force and weapons. Also, just to equip somebody with a collapsible baton or pepper spray or something of that nature causes us great concern, because violence can often escalate.

Most security practitioners realize that their role is limited in terms of the use of force and that there are a lot of dangers out there. Certainly, police have the full continuum available to them. They're able to escalate the use of force based on circumstances that they have to be accountable for. But just to give to somebody one weapon may pose more problems than it solves and, we believe, put security personnel at risk as well.

Mr. Kormos: What's your position?

Mr. Miller: We don't believe that security personnel should have weapons. There is not a need for them.

The Chair: Thank you, Mr. Kormos. We move to the government side.

Mr. Delaney: Two quick questions I'd like your opinion on: First, who should decide on the training standards, and second, how should Ontario ensure that whatever training standards we decide on are applied uniformly?

Mr. Miller: Sorry, I missed the first question.

Mr. Delaney: Who should decide on the training standards?

Mr. Miller: We believe that the province has a role in that area, because it is in the interest of community safety. Currently, at the committee level, through the ministry committee, we are developing training standards that would be mandated by the province. It is a minimum adequate standard, and certainly many security companies will give additional training, but we believe that the province should be the governing force in that area to preserve community safety.

Mr. Delaney: Should it be the only entity that should decide the training standards for security guards in your opinion?

Mr. Miller: Certainly there are always local issues, and I don't think you can create a training standard for everything. Security companies will have to deal with local issues such as airports or different things of that nature that may require specialized training. But much the same as in policing, the base training should be mandated by the province, and we're working toward that right now.

Mrs. Sandals: If I could just go back to the questions that Mr. Dunlop was asking around accountability and enforcement of the licensing regime, are you satisfied, then, that the regime of investigation and inspection that was set up, which is quite new, under the act will serve to strengthen the accountability around this whole licensing scheme?

Mr. Miller: I am. Certainly, the regulations that accompany it are going to be key, because really, that's where the teeth are: in the legislation.

Mrs. Sandals: Thank you.

The Chair: Thanks you, Mr. Miller, from the Police Association of Ontario, for your presence and deputation.

ONTARIO RESTAURANT HOTEL AND MOTEL ASSOCIATION

The Chair: I now invite our next presenter, Mr. Terry Mundell, president and CEO of the Ontario Restaurant Hotel and Motel Association and company.

Mr. Mundell, I invite you to please begin your presentation, reminding you that any time remaining will be distributed equally for questions afterward. Please begin.

Mr. Terry Mundell: Men and ladies of the committee, it's a pleasure for me to be here today. My name is Terry Mundell. I'm the president and CEO of the Ontario Restaurant Hotel and Motel Association, and with me is my colleague, manager of government relations Michelle Saunders.

It's my pleasure to have the opportunity to speak to you this morning regarding Bill 159, the Private Security and Investigative Services Act. The Ontario Restaurant Hotel and Motel Association is a non-profit industry association that represents both the food service and accommodation industries in Ontario, with over 4,100 members province-wide representing 11,000 establishments. The ORHMA is the largest provincial hospitality association in Canada. Ontario's hospitality industry is comprised of more than 3,000 accommodation properties and 22,000 food service establishments, employing well over 400,000 people.

Let me begin by stating that the hospitality industry is committed to ensuring the safety and protection of their customers, staff and the public and, accordingly, the ORHMA supports the intent of the legislation. The ORHMA is very pleased to have a seat on the private security and investigative services advisory committee as the sole representative of the hospitality industry. Participation on the advisory committee allows the ORHMA and our members to consider and respond to draft regulations and to ensure that the concerns and realities of the hospitality industry are reflected in the regulations. However, having said that, the ORHMA does have serious reservations with the legislation, which, if left unamended, may have serious implications for both the food service and accommodation sectors.

The legislation requires all security guards to undergo training and testing in order to become licensed security practitioners. The ORHMA, while supporting these guiding principles, has serious concerns with the definition of the term "security guard" and the use of the term "bouncer," which is undefined in the legislation.

Let me first discuss the impact this legislation will have on the food service industry. Under the Liquor Licence Act, operators are responsible for ensuring that no minors are served alcohol. For this reason, some bars and licensed establishments have door staff located at the front entrance of the property to verify identification to ensure that all patrons are of the age of majority. The legislation makes no distinction between door staff checking identification and door staff specifically responsible for the safety and security of patrons and staff.

Furthermore, the legislation defines a security guard as one "who performs work, for remuneration, that consists primarily of protecting persons or property." It is not uncommon practice for a staff person to perform security duties for only a portion of a night or perhaps only on Friday and Saturday evenings, while performing other duties throughout the remainder of their shift or of the week. Are these individuals to be licensed too? The use of the word "primary" then comes into question.

There is also a concern that licensed establishments in rural and northern Ontario, which typically do not have security guard personnel but who may periodically employ someone to act as a security practitioner on a special occasion, may experience difficulty in accessing a licensed security guard due to their location. Bill 159 requires such operators to use the services of a licensed security guard from a licensed security company, and surely access is a concern for us.

Hoteliers, however, will be potentially impacted in a number of different ways. Some large hotels currently employ the services of security guards through third-party security companies. These security companies, under the new act, would be required to be licensed and to ensure that all security staff are also licensed practitioners. The government must ensure that the onus for ensuring the good standing of these security practitioners lies solely with the licensed security company they are directly employed by. Similarly, it is a common practice for large groups, such as a school group, staying at a hotel to employ the services of a security company. Hoteliers question who would be liable for ensuring that the company hired is in good standing: the group organizer or the hotel?

Further, hoteliers have raised a significant concern with the definition of "security" that we believe goes beyond the intent of the legislation. It is a common practice within the accommodation industry for managers to do regular rounds of each department within the facility to act on behalf of a manager not currently on shift. Acting managers on duty would deal with issues such as human resources issues, disgruntled guests or emergency situations, and part of their duties would include security rounds, although this is not a primary duty. The ORHMA questions if it is indeed the intention of the government that all hotel managers and assistant managers actually become licensed security guards. Common sense would suggest not, but again, the definition is vague and clarification is warranted.

As mentioned, the hospitality industry is committed to providing a safe environment for patrons, staff and the public. I would point out to the committee that 60% of the hospitality industry is independently owned and operated, with pre-tax profit margins ranging from 3.7% to 4.3 %. I would encourage the committee to be mindful of the economic reality of the hospitality industry when considering the cost burden this legislation may impose. Training standards and testing standards must be developed with the mindset that they may not be cost-prohibitive.

In order to ensure support from the hospitality industry, the ORHMA recommends that this committee amend the definition of "security guard." Such an amendment should more clearly define who is, and therefore who is not, impacted by this legislation. The ORHMA would also further recommend that this committee define the term "bouncer."

As a final note, let me state clearly that the safety of our patrons, staff and the public is paramount within the hospitality industry. It's just good business.

Thanks for your time, Mr. Chairman.

The Chair: Thank you very much, Mr. Mundell. You've left a lot of generous time for questions, and we will begin with the PC side.

1020

Mr. Dunlop: Terry, it's good to see you here again.

Michelle, are you doing a separate one?

Ms. Michelle Saunders: I will be presenting for the GTHA as well.

Mr. Dunlop: OK. Thank you very much.

You're looking for the committee to re-examine the definition of a security guard, just outright on that?

Mr. Mundell: Yes. The real question or concern that we have is that the definition, as it sits now, may be all-encompassing and leaves too much room for interpretation. Again, under the Alcohol and Gaming Commission of Ontario, if you were to look at the amount of fines or suspensions that were levied by the AGCO, two of the most prominent issues are underage drinking and overcrowding. So a lot of the licensed establishments have people at the door who are checking identification to make sure that those coming into their establishments aren't minors. They're also doing a head count to make sure that they're not overcrowding the facility. Again, that's under the Fire Marshals Act.

The question is, for those particular people, are they included under this legislation? We think there's a possibility that they may be and we don't think that's appropriate.

Mr. Dunlop: Can I get more time?

The Chair: Please.

Mr. Dunlop: Good. I agree that you want community safety, and the safety of your patrons and your employees

is a priority here. But what type of a demand is there from your members for this type of legislation? Is it very important? How would it rank as far as a priority to your membership?

Mr. Mundell: I think in terms of safety and security in any business, particularly in our business—we are in the hospitality business, not the hostility business, so it's important that we provide a good, enjoyable experience for those who are in Ontario or who come to Canada or come and enjoy our great tourism industry that we have. Safety and security is obviously paramount; it really is a significant issue for us.

Having said that, to suggest that we pined for this legislation, I would tell you that's not the case. But it really is important, again, to get a clear definition on who will be involved in this type of legislation; whether a hotel manager needs to become a registered or licensed security personnel. Those are real, significant questions that we need to get clarity on.

The Chair: Thank you, Mr. Dunlop. We move to Mr. Kormos; three minutes, please.

Mr. Kormos: I share your concerns. For instance, somebody hired to be a house-sitter—because their primary role is to just be there, to prevent break and enters, to turn lights on and off, to make sure the furnace doesn't go off in the wintertime—could well be required to be licensed under this legislation. I don't think that's what anybody has in mind. That's the extreme example. I'm building a new house and I hire a kid because they just delivered the two-by-fours, and I want to make sure nobody comes—down where I come from we have a lot of pickup trucks—and pilfers my little, private, one-of, residential construction site. I can't hire a neighbour kid to sit there in a lawn chair all night to protect my property, I believe, unless he or she is licensed. So it causes concern.

Bouncer: Again, if it isn't defined, then the courts or adjudicators will have to use a dictionary definition, and I put to you that dictionary definitions will be in many cases overly broad or overly narrow.

The issue arises, from my view, not around the passive security personnel; the concern arises from the active security personnel. It doesn't arise from the Canadian Corps of Commissionaires sitting in the front of provincial court at city hall, directing people to courtroom A, B, C or D, or the fellow sitting in the shopping plaza, telling people where Zellers is.

What about training? We've heard a proposal that we need standards. Mr. Gardner has referred us to the federal standard. We heard about 40 hours as a standard. We heard that police officers' initial training is 12 weeks at the Aylmer police college. The community colleges are going to be here, talking about 12 months, I suspect; I'm not sure. What's the standard for training, in your view?

Mr. Mundell: I think the issue for us comes around twofold. There is one issue about what is the level of training required, and secondarily, what is the cost component to it, because obviously there is an affordability issue in terms of training. There's also an access issue. In rural and remote parts of northern Ontario, which may be required to have trained personnel, access to that could be quite difficult. We know that in our industry it is a struggle in specific parts of Ontario to get training in other fields, whether it's issues through public health that we need to train for or whether it's other issues around the Alcohol and Gaming Commission. It is difficult to access personnel without an eight-hour trip in a lot of parts of northern Ontario. Clearly, we believe the training should be outcome-based. We think it should be delivered by a variety of models, including public and private sector. The government should set the standards. We're involved in the committee to work toward getting those standards set, but again, access and affordability are two major issues for us.

The Chair: Thank you, Mr. Mundell. Mr. Kormos, you do have a little more time if you'd like to use it.

Mr. Kormos: Let's see what these folks come up with. There may be a little bit of time; I'm just trying to be fair. I'm going to share.

The Chair: I appreciate your efforts toward equity. I move to the government side. Mr. Delaney is interested in the first question.

Mr. Delaney: Thank you very much.

I have a question for you. I'd like to extrapolate a little bit from some of the remarks that you've made. Are you suggesting that pursuant to Bill 159 there should be multiple categories for security guards? If so, does that suggest different standards for each category and perhaps different licence classes?

Mr. Mundell: I would suggest that that's a possibility, and that is something we need to work through the committee process to try and get to. Again, when you go back to training, there could very well be multiple levels of training, there could be multiple access points for the training, and there could be multiple price points as well. It is something that we want to explore further. Our association is interested in talking about that. I don't think we're far enough advanced in the process to understand what those levels are, again understanding that affordability and access are important issues.

Mr. Delaney: Just one other question. Again, I'm looking for your opinion on this. To what degree do you think it's fair to require an employer to pay training expenses, and to what degree do you think an individual should take responsibility for training expenses in such an occupation as providing security services?

Mr. Mundell: That's an interesting question. Our industry is fairly diverse, and in fact about 63% of it is independently owned and operated. With profit margins running between 3.7% and 4.3%, there's not a lot of room to move. The bottom line is that somebody has to pay for it. At the end of the day, the consumer will end up paying for it. This will drive costs; that's the reality of the beast. We work in a variety of environments, from mom-and-pop shops to union environments, and I think it will be left up to all of those operators individually which is the best way to make that determination.

The Chair: Ms. Sandals.

Mrs. Sandals: First of all, let me assure you that it is not the intent of the legislation that all hotel managers become security guards. Quite clearly, it is not the primary business of a hotel manager to be a security guard. There is no requirement that that person be a licensed guard.

You've raised the issue of the definition of a bouncer, and that perhaps that needs to be clarified in regulation. Have you made any specific proposals as to how that should be clarified?

Mr. Mundell: What we have done is brought to this committee's attention, and to the other committee's attention, the issues we have.

Specifically, we are required under the Alcohol and Gaming Commission to make sure that those coming into our facilities aren't minors, so you've got somebody at the door checking ID. Under the fire act, you've also got people doing a head count, making sure we're not overcrowded. They are, by the way, and again I reiterate, probably the first two—one and two—charges that the Alcohol and Gaming Commission levies against the hospitality industry in Ontario.

What you don't want to have happen is that operators decide they'll no longer put that person at the front door because all of a sudden they've got to license them as security personnel. In fact, you'll find many operations that will have that person at the front door and security personnel inside, so there's a hybrid situation there. We're looking to get clear definition to have exclusions for those groups. We need to work through that process to get them. It's the same with the hotel manager. Clarity is extremely important for us. When you look at the Alcohol and Gaming Commission's legislation, there are over 1,000 pages of interpretive guidelines. It's a significant burden on small, independent operators, as with any operator in Ontario, to understand the rules of the game. Clarity is paramount in this stuff.

1030

Mrs. Sandals: You would be able, then, to provide the committee that's actually working with the regulation and definition with some input—

Mr. Mundell: Yes.

Mrs. Sandals: —into suggestions for clarifying the "bouncer" definition? It seems to me that that's where that needs to occur, at the committee level.

You raised another issue around a concern about liability when you hire a third party security company. I'm wondering how that would work right now. If you're hiring a third party security company right now, while the licensing requirements aren't satisfactory or we wouldn't be here trying to amend this, you would have the same situation where you've got a company in which the employees are required to be licensed. I'm wondering how you currently manage that liability situation.

Mr. Mundell: Again, I think—

The Chair: Just for the committee, I'm going to have to render that question rhetorical only, and thank you, Mr. Mundell, for your testimony.

GREATER TORONTO HOTEL ASSOCIATION

The Chair: I would now invite Ms. Saunders of the Greater Toronto Hotel Association to begin her presentation.

Ms. Michelle Saunders: Thank you, Mr. Chair. I'm here today on behalf of the Greater Toronto Hotel Association. Mr. Rod Seiling unfortunately couldn't be here today and extends his welcome to you all. He has asked me to bring forward his comments.

The Greater Toronto Hotel Association, or GTHA, represents over 150 accommodation businesses which operate over 35,000 rooms and employ approximately 25,000 people, some of whose primary responsibility is the safety and security of our guests and their property, as well as the property of their employer. Our members have an enviable record as it relates to the safety and security of guests, staff and their property.

The GTHA is supportive of the principles that Bill 159 represents. We agree with and support the objectives of having competent individuals who have demonstrated a level of professionalism via proposed training and testing standards. Hotel security staff, we suggest, will already meet and surpass this level of competency. Our collective success requires us to meet and/or exceed what we understand will be the established standards.

We do believe the proposed act needs some clarification so that it achieves what we understand the intent of the act to be. We do not believe the government intends to saddle the industry with an unnecessary layer of bureaucracy and red tape.

The first issue this morning is the definition of "security guard." The definition of a security guard needs to be clarified. The legislation defines a security guard as one "who performs work, for remuneration, that consists primarily of protecting persons or property." This definition could, via an overzealous interpretation, result in any individual who performs a security function on an occasional basis being required to obtain a security guard licence.

For example, a hotel's night duty manager's primary function is to manage the ongoing operation of the hotel. That person is the de facto general manager. Occasionally, a call may come in that is security related. For instance, a guest may call down to the front desk complaining about noise in an adjoining room. In all likelihood, it would be the responsibility of the duty manager to resolve the situation, as the hotel does not staff the security function at night, for obvious reasons. A warning is usually sufficient. The matter would be turned over to security or police should the situation warrant it.

We do not believe it is the intent of the legislation to capture incidental security issues and related matters. We suggest that the legislation reflect that intent.

We are also concerned with the issue of liability as it relates to the employment of security guards via an arm's-length security company. It should not be the responsibility of the entity hiring the contractor that the

personnel supplied are licensed and insured. We suggest that a declaration by the security company suffice, as it relates to its personnel, that they meet all requirements under the legislation.

Thirdly, we have a concern as it relates to the development of the regulations. Training and testing should not be cost-prohibitive, in that we do not want it to deter good candidates from joining our industry. Further, we suggest it preferable to have industry-specific standards, and would be willing to assist in their development.

Thank you again for the opportunity to appear. Safety and security is an important and vital component to our business, and we look forward to working with the government on the implementation of Bill 159.

The Chair: Thank you, Ms. Saunders. We have about 12 minutes to distribute, and we'll begin with Mr. Dunlop.

Mr. Dunlop: Thank you very much, Michelle. I can tell you that it's not the intent of our caucus, and I don't think it's the intent of the government caucus, to make this so bureaucratic that in every organization, whether it's a small bed and breakfast, for example—I'm sort of going in the direction that Peter might be going as well—or a small inn where there's someone on the counter, that person would be considered the security guard and might have to have licensing and there would be a whole level of bureaucracy created around that. That is not the intent in this bill—my feeling anyhow—and I hope we're not going in that direction, not even remotely. In fact, I found it even surprising to see these two organizations on the agenda. I didn't even think of those types of things.

I just want to emphasize that to you, that that is not the concern from this caucus. I'll be looking forward to the comments of the government side on how they feel about some of the concerns, because I think this definition of "security guard"—and both of you folks have brought this up. I think we do have to maybe make some amendments or clarification on that, if that's what the general public and some of the stakeholders are referring to.

I'm just making more of a comment here, but if you want to add something to that, I'd be more than happy.

Ms. Saunders: I would like to respond. Thank you for your comments. We appreciate the clarification and we certainly understand that it's not the government's intent to require hotel managers to become licensed security guards, but we feel that the definition as it currently stands is vague and could be interpreted to include them. We would respectfully request of the committee that under section 2(7) of the legislation an exemption for hotel managers might be added.

The Chair: Mr. Kormos.

Mr. Kormos: You're right, except that 2(7) then could become an incredibly lengthy list. If the problem is one that's inherent in the definition, you don't address it by creating—because there's going to be a list of exclusions. I'm sure the government doesn't contemplate housesitters as having to be licensed. Unfortunately, the legislation requires them to be licensed—end of story. But that means we have to address that, and I hope it is addressed before this committee is finished.

I want to reinforce the fact that there just seems to be such a wide range of security being provided out there in so many different respects. The bouncer is so very different in terms of his or her needs regarding training from the industrial security person who's going to have to deal with the prospect of industrial toxic things and from the person who's doing general security in the hotel, the house security. That means there's going to have to be a wide range of training.

We're going to hear from community colleges, and I want to see what they have to say about that. What does your industry say about the fact that you impose standards like this—the security industry historically has been a low-wage industry. It's not a criticism; it's a reality. People approach it as (1) an alternative job, or (2) increasingly young people coming out of the community college programs as a prelude to getting into mainstream public policing. They have a desire; they have an interest in this. But this is going to have an inevitable impact on the wage expectations of security workers. You can't expect them to work for recently even single-digit hourly wages when they've had to participate in and complete, hopefully and presumably, some pretty rigorous training.

I heard what your colleague up there had to say about the profit margin. I don't dispute that. What do you have to say about the inevitable pressure to provide higher wages when you've got better-trained people who are being more highly regulated? What should the industry be able to expect? What should a mainstream security officer expect to earn after meeting the standards that you anticipate by this legislation—$18 to $20 an hour?

Ms. Saunders: I don't know the salary range, but I would like to just start off and clarify that in the accommodation industry it is common that security guards and security personnel already do receive training. The accommodation industry is very proud of that, and they do already have industry-specific standards.

I would expect that it's the role of the government and the private securities investigative services advisory committee to establish regulations that would set a benchmark, but there likely will be absolutely industry-specific standards that need to be developed on top of that because there is such a difference in the security that's delivered. Between the bouncers and the airport security, as an example, there is certainly a difference. Certainly this will have an economic impact on the industry, and they're aware of that.

Mr. Kormos: What about grandparenting? What about a member of the Canadian Corps of Commissionaires who has been performing security work without objection for eight years now and is going to lose his or her job if he or she doesn't, and is highly unlikely to, want to go back to school? What do you say about grandparenting? There's a whole lot of good people out there doing security work in any number of arenas and at any number of levels, right? What about them and their jobs?

Ms. Saunders: I sit on the advisory committee and the commissionaires do as well. We have actually not necessarily approached that topic yet. I think that issue is something that we will tiptoe into the waters on.

1040

Mr. Kormos: How are you going to approach it? What are you going to say about it?

Ms. Saunders: We've been told by the registrar of the securities branch that there will be a phasing in, that it's not expected that anything would be implemented until 2007. So there certainly would be a phasing-in period to allow people who are currently employed to go through the new training programs, to receive their licenses, so that by the time everything comes into effect by 2007, they do have their licence with them and are able to meet all of the regulations.

Mr. Kormos: Chair, do you know the grief that was caused in our court system when the Ministry of the Attorney General dumped all those veterans and senior citizens who were doing benign courtroom security, directing people? They all got turfed—boom—like that. Remember that, Garfield? Out the door, mandatory retirement on the part of the government.

The Chair: Thank you, Mr. Kormos. I now move to the government side.

Mrs. Sandals: I take it from your comments, then, that you're reasonably supportive of the phasing-in schedule that's been laid out.

Ms. Saunders: We are. Our emphasis really has been to make sure that our members have access to the training, and that the training is affordable for everybody.

Mrs. Sandals: Just a curiosity question, because you're GTA, so you're dealing with some pretty major hotels: For your hotels, what percentage of the security services they supply would be through third-party security companies who are currently licensed, and what would be in-house, which is currently exempt? What's the split there? Do you have any idea?

Ms. Saunders: I don't have a percentage for you, but I can tell you that with the larger chains, the vast majority would be third-party contracted.

Mrs. Sandals: So it actually has tended to be the practice for your larger members, at least, to be using people who are licensed, as opposed to in-house people who may be untrained.

Ms. Saunders: Yes.

The Chair: There is still quite a bit of time left, if any other government members would like to pose a question.

Seeing none, I'd like to thank you, Ms. Saunders and Mr. Mundell, from the GTHA as well as the Ontario Restaurant Hotel and Motel Association.

DAVID STERBACK

The Chair: I would now invite our next presenter, Mr. David Sterback, who comes to us in his capacity as a private individual.

Mr. Sterback, if you would present yourself. Please have a seat, Mr. Sterback. You have approximately 15 minutes in which to address us. Please begin.

Mr. David Sterback: My name is David Sterback. To tell you a little bit more about myself, I'm an outreach worker for the Ontario Provincial Police, a volunteer.

Paul Martin, the Prime Minister, knows about this problem. He basically said, "Paul Hellyer found a minnow and thought it was a shark." I've been a victim of security guards, most notably at Ryerson University, and banned from campus. I have my student alumni card. I believe I have legal authority to go to Ryerson as long as I obey the rules. Paul Martin told me that I can; he'll allow me.

I have this notice prohibiting entry—"prohibited activity." Trying to find out what the reason was is a problem.

They're trying to say that I was fornicating with college women. Well, I was a virgin at the time they were telling me this, and I certainly haven't been involved with any women at all, so it just hurts.

I did write a letter to the government, the Attorney General's office, on problems with security guards. The letter writer insisted that I was the one who was arrested. The police were called; I was the one that was arrested and charged. They weren't going to deal with it any further.

We have stuff like, the OPP have told me, hate legislation being violated, the Statutory Powers Procedure Act; there was no hearing. This came from my friends at the OPP.

I'd just like to go through—I think it's section 19 in the bill. The 90-day limit on complaints is too short. I think six months, as per the police complaints act, should be the standard. On the item "frivolous, vexatious or not made in good faith," there's a statement like that in the Police Services Act, and it's being used as a crutch by the complaints bureaus. Sergeant Don said we'll take that crutch away from them, referring to the police. It is footnote 140 in the LeSage report. It has come under fire.

It's just a lot of hand-wringing and gnashing of teeth, trying to get security guards to follow the law as written. We do have protections. There's even an International United Nations covenant on civil and political rights. It only has accession in Canada; it hasn't been ratified, but it does have power.

I'd like to entertain any questions—just a better complaints system.

The Chair: Thank you, Mr. Sterback, for your presentation. We have a lot of time left for questions, and we'll begin with you, Mr. Kormos.

Mr. Kormos: I don't have a whole lot. Thank you very much for coming. We appreciate hearing these sorts of things. Ms. Sandals is the powerful person on the committee. I'm just an opposition member, but she's the one you want to deal with—

Interjection.

Mr. Kormos: Nobody answers my calls here. She's the one you want to deal with to get redress on this

matter. She's the parliamentary assistant to the minister. I would recommend, seriously, that you make sure her office redresses your matter.

The Chair: Thank you, Mr. Kormos, for serving the public interest. I'd now like to move to the government side, if there are any questions.

Mrs. Sandals: Thank you very much, sir. I wonder if you've had a chance to look at the outline of the legislation, because in fact your concern about having a public complaints process—one of the things this piece of legislation does is create a public complaints process where people can call and lodge a complaint. As a result of that, there could be an investigation. If the investigation is borne out to show that the complaint is valid, there could be sanctions or conditions put on security firms and companies. So some of the issues you've raised around needing a public complaint mechanism are in fact being addressed in the legislation. I just wanted to make you aware of that.

Mr. Sterback: The 90-day rule is critical, I think. It's just that going through my experience with the police complaints system and my complaints falling on deaf ears and cold insensitivity—they simply won't believe that the incidents happened. I even took the unusual step of suing a security guard at the Delta Chelsea, and Prime Minister Chrétien said that my lawyer should have talked me out of it because it caused a conflagration. He obviously wasn't for the little guy. I'm feeling swamped. As I said before, it's gnashing of teeth. It's not the legislation as written; it's trying to get conformity.

Mrs. Sandals: Thank you very much for your input, sir.

The Chair: Thank you, Mr. Sterback. We did receive your written deputation, and should you have anything more to submit, please refer your material to the committee.

COMMERCIAL SECURITY ASSOCIATION INC.

The Chair: I now invite our next presenter, Mr. Marcel St. Jean from Holt Renfrew. I remind you that you have 15 minutes in which to present. Any time remaining will be distributed equally amongst the various parties. Please begin.

Mr. Marcel St. Jean: Good morning, members. My name is Marcel St. Jean. I'm the national director of loss prevention for Holt Renfrew. Today I'm representing the Commercial Security Association of Canada, of which I'm the chairman. I'm just passing out my quick presentation here.

I'd like to give you an update, a little about what the Commercial Security Association is. The Commercial Security Association was incorporated in 1966. It is an organization of professionals at the management level of private, in-house security, being financial institutions, oil, transportation, retail, telecommunications, health care, hotels, entertainment and education, to name a few. Examples would be General Motors, Bell, IBM, the Bay, Air Canada Centre and the University of Toronto. The association consists of approximately 400 members representing 100 private companies or corporations. The association does not allow anyone to be a member if they are a vendor, supplier or anyone licensed under the present Private Investigators and Security Guards Act.

1050

The Commercial Security Association is presenting the following recommendations and concerns we have that will affect all in-house security practitioners by the introduction of Bill 159. As a result of reviewing this particular bill over the last couple of years and having the registrar of the present act come out to our association on two occasions in the past, what we've identified in these meetings is that the single biggest factor is the clarity of how this is going to affect in-house security practitioners who are not included in this particular act as it stands today.

The questions asked are, "How is this going to affect me?" and, "Am I going to be licensed?" Presently the bill, under "Interpretation and Application," part I, subsection 2(4), states, "A security guard is a person who performs work, for remuneration, that consists primarily of protecting persons or property." The Commercial Security Association believes that in-house security practitioners should have a separate classification to make them distinct from third-party security services. On the following page is a recommendation. Our recommendation for the interpretation and application of this for in-house security practitioners is: "An in-house security practitioner is a person who performs work, for remuneration, that consists primarily of protecting persons or property for a private company or corporation." Examples of this type of work to protect persons and property are any employee who primarily enforces the Criminal Code of Canada for fraud, theft, assault etc. or provincial offences such as petty trespass to public property or to protect the public, its staff and its property.

The next section we are concerned about is under "Mandatory Requirements:" "The person has successfully completed all prescribed training and testing." If it is agreed upon that only those enforcing the Criminal Code of Canada and provincial offences for in-house security be licensed, then the Commercial Security Association members request that the only mandatory training required for in-house security practitioners would be citizens' powers of arrest, use of force, search and seizure and basic first aid and CPR. All other training should be voluntary and left to each private company or corporation, as there are very different requirements between companies, such as report writing, crime prevention, emergency situations, bomb threats etc. Again, all the private companies and corporations that I represent probably far exceed the basic minimums that will be required in the training that will be asked of us.

For training and testing, our association requests that the registrar's office certify our existing training programs that will allow the private industry to train and test

itself. In discussions with the registrar, he is in basic agreement that that will take place.

Bill 159 discusses facilitators, investigators and inspectors. Our association is requesting more clarification on their roles and who they will be.

Investigations, 21(b), "initiate an investigation ... if no complaint has been made." Our recommendation is that the association believes that a warrant would be required to exercise this option.

"Investigations, search warrant ... Although a warrant issued under section 22 would otherwise be required, an investigator may exercise any of the powers described in subsection 22(2) without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would be impracticable to obtain the warrant." Clarity is needed as to what constitutes exigent circumstances and, if there is a difference of opinion as to the scope of the circumstance, who then decides?

Last, concerning part V, "Complaints and Investigations," our association requests that if a complaint is received by the registrar's office, a copy of the complaint be forwarded within five business days to the said company or corporation so that we can rectify the situation through customer service.

Thank you very much.

The Chair: Thank you, Mr. St. Jean. We now move to the PC side. We have approximately three minutes per party.

Mr. Dunlop: Thank you very much, Mr. St. Jean. I appreciate your coming. I missed the first little bit of it, but basically what you've done here is outline the amendments that you would like to see made to the bill.

Mr. St. Jean: That's correct.

Mr. Dunlop: I look forward to hearing the government's comments on those particular amendments. I don't really have a question other than if you want to elaborate on part V a little more. "Our association requests that if a complaint is received," that one; it's on page 11.

Mr. St. Jean: What I understand under the act is that a person will have approximately 30 days to report in writing to the registrar the specific complaint, possibly a violation of the code of business conduct, against one of the licensed individuals. So as a private company or corporation, we're requesting that we would like to know what that complaint is within five days so that we could possibly resolve that issue through customer service, rather than waiting until the investigation or the facilitator is assigned to look at that individual complaint.

Mr. Kormos: I'm just shocked to think that Holt Renfrew-type customers are boosting Versace off the third floor and ditching the swag in the trunk of the BMW before the security guard catches up with them. It's just remarkable.

I thank you for bringing up section 23, warrantless searches—although it excludes dwelling houses; let's be very careful, everybody on the committee—for importing search powers that police don't have for very, very serious criminal offences, short of, I think, occasionally firearms offences, where they have some powers of warrantless search. That's a very important consideration, section 23. I'm encouraging my colleagues to vote against section 23 and remove it entirely from the bill.

Your comments are interesting because, of course, your place, Holt Renfrew, is a place to which the public is invited; right? The public is in and out of there, and part of the purpose of the legislation—and I think everybody endorses the broader purpose of it, responding to the coroner's inquest and so on—is to protect the public from inadequate or inappropriate behaviour on the part of security personnel.

Mr. St. Jean: Right.

Mr. Kormos: I appreciate your argument about in-house security personnel, except in the case of a retail store, it's not totally in-house because I, as a member of the public, could be subject to inadequate conduct, inappropriate conduct by that security personnel. So Holt Renfrew or another retailer is a little different from a bona fide, 100% private place to which the public is not given access; right? So how do you respond to that distinction that even I'm prepared to make? Normally I'd perhaps be on your side on that one, but I'm prepared to make that distinction: The public could be subject to inadequate or inappropriate—is that fairly put?—behaviour on the part of a security person. How do you respond?

Mr. St. Jean: This is where we are asking that it only be those persons whose specific responsibility it is to respond and administer the Criminal Code or provincial offences to protect the public, its staff or its property.

Mr. Kormos: So the public versus in-house staff, for instance. Are you saying those security personnel who deal with internal security would not be subject?

Mr. St. Jean: Would not be subject to licensing?

Mr. Kormos: Yes.

Mr. St. Jean: No.

Mr. Kormos: Who wouldn't be subject to licensing, in your proposal?

Mr. St. Jean: It possibly could be in-house, if they enforce the Criminal Code. That's my definition. They have to enforce the Criminal Code either on the public or the staff of a location or their private property; then they would have to be responsible to be licensed.

Mr. Kormos: The next time I see some Rosedale matron acting suspiciously in Holt Renfrew, I'm going to do my duty and report her promptly. Count on it.

Mr. St. Jean: Thank you.

The Chair: Thank you again, Mr. Kormos, for serving the public good.

Mr. Kormos: Shoplifting costs everybody.

1100

The Chair: I'd now move to the government side. Ms. Sandals.

Mrs. Sandals: You raised an issue, and I was trying to find it in your slides—OK, finally, it's in the last one here.

Mr. St. Jean: Which page is that?

Mrs. Sandals: I'm looking at page 11. Some of these issues—and I guess this happens to be my background. In cases where there has been an allegation of inappropriate sexual conduct—child abuse, for example—it's actually specifically forbidden that that complaint be related to the person against whom the complaint is lodged in order to carry out an appropriate investigation. Hopefully, that isn't what is going to happen in retail security, but you can imagine that within the whole security sector there would be issues where the complaint might involve a criminal offence. I'm wondering how this request you're making that the subject of the complaint has to be notified that they're potentially being investigated for something that could eventually be turned over to the police as a criminal offence—that we would put in law that you have to be notified. That would seem to me to conflict with good police investigation practice. Until the investigator from the registrar's office determines what they're dealing with and whether or not this needs to be turned over to police, it would seem to me that there is a conflict between the public interest that a potential criminal offence be properly investigated and your private interest as a retailer, which is—I understand that you want to deal with complaints in a timely fashion. I'm wondering how you resolve that conflict.

Mr. St. Jean: Again, I'm not specifically sitting here for the retail environment; I'm sitting here for the Commercial Security Association, not for Holt Renfrew, although we are a member of this association. I'm talking in regard to the commercial and residential aspect of in-house security. For example, if a guard has a complaint of sexual harassment or something like that laid against him, we believe we need to know that very quickly so we can react to that, rather than waiting for an investigation to take place. We don't know how long that's going to take, but they would still be in our employ, our not knowing that a registered complaint that serious has taken place. How are we to react and then continue to protect our staff and the public?

Mrs. Sandals: But my recollection of the legislation, without going back and looking at it—we'll need to check this—is that the legislation is permissive, that is, that the registrar could get back to the employer about the subject of the complaint. It would seem to me that it's probably in the public interest to have some discretion, which is what the "may" provides, to do the thing most appropriate in terms of public safety, as opposed to an automatic requirement that might interfere with public safety. Obviously, your interest and my interest in terms of public safety would both be served by dealing with a serious incident expeditiously and appropriately, but it's just that it's hard, as we sit here drafting, to imagine exactly what's in the best interests of public safety in every circumstance.

Mr. St. Jean: Right. Again, we trust that the registrar hopefully will then analyze an action appropriately, the complaint, and highlight the seriousness of it. We're recommending five days. I don't know if it's five, three, or if it's two weeks, but we would like to have something where we know we would be informed somehow in an appropriate manner within a reasonable time.

Mrs. Sandals: Thank you.

The Chair: Thank you, Mr. St. Jean, for your deputation and your presence.

STRATEGIC TRAINING CONCEPTS

The Chair: I now invite our next presenter, Brady Parker, senior instructor of Strategic Training Concepts. I'd invite you, Mr. Parker, to please come forward. I remind you as well that you have 15 minutes in which to make your presentation. Any time remaining will be divided equally. Please begin.

Mr. Brady Parker: Thank you for your time. My name is Brady Parker. I represent an organization called Strategic Training Concepts, which in essence is an organization that trains the private sector in, essentially, behaviour management systems. You could read "use of force" into that. I'm going to keep my remarks fairly brief, fairly to the point and specific to the area of use of force. A written submission is on its way; it's being drafted by my chief instructor.

In particular on the area of use of force, it is something that is being addressed in the legislation. I don't feel, however, that it's being addressed enough in terms of practicalities. Your right to arrest is certainly found in section 494 of the Canadian Criminal Code. Provincially speaking, it's found under the Trespass to Property Act. In terms of your ability to arrest, you will tell someone, "You are under arrest." If they choose at that point to ignore what you've said, you are now basically in a physical altercation. One thing that the majority of training organizations out there are doing is spending time on the theoretical, which I agree with 100%. I would also like to see within the new legislation a specific amount of hours attached to the actual physical training to be able to apply that law.

Certain areas of the private sector, as we are well aware, are patrolling malls, ports and airports. They're very proactive. I'd also like to speak to the equipment that these individuals carry. There's a mall here in the greater Toronto area that, the last time I looked at the information, receives somewhere like four million people a month going through that mall. Just to put that in perspective for you, I'm from New Zealand. We have four million people in my country. We have a police force of approximately 10,000 to deal with those issues. In this area in Toronto, this mall with approximately four million people walking through, there are approximately 52 guards who deal on a daily basis with the same things that police officers deal with, and from what I've seen, they do a very good job.

There is a difference between in-house security staff and contract security staff. Generally speaking, in-house security staff are at a higher standard because there are better hiring practices. With a lot of the contract security companies, it's merely, "It's a warm body. Let's hire

them. Let's get them out there." They have a large turnover rate.

Why this is relevant in terms of use of force is simply because if you have a high turnover rate, you're going to spend minimum time training these individuals. My organization proposes 40 hours of actual physical training in the equipment carried. I would like to point out that the equipment carried is there for a purpose. It's in direct response to what the client dictates. The client would be the subject or the person under arrest. In other words, if they need to be handcuffed, that's what they're there for. I believe that batons, or intermediate weapons, as they're classified, should be allowed to be carried by security practitioners with an additional 16 hours of training on top of that. The 40 hours of training prescribed would be physical control tactics, since most security officers do not carry firearms and do not carry pepper spray because it is prohibited under the act. The only thing they can rely on at that point to physically arrest somebody is their physical control skills. This is where we see most of the injuries occur to people who are being arrested and, quite frankly, back to the security officer as well. I would like to see more physical training.

As to who should do the training, there are several organizations out there that will actually qualify instructors, and they will then need to reassert or retrain or re-qualify, in some cases every six months; that is, in batons and control defensive tactics and so on down the line. These control defensive tactics are merely the physical application of force to an individual. The Criminal Code allows for that to take place under sections 25 and 27, as long as it is reasonable and necessary. So the definition needs to be in training as to what is reasonable, what is necessary. Again, it is the client who dictates the response. It's important to understand that these people would not necessarily be arrested—I certainly would hope they would not be arrested—unless they had committed an act that warranted that arrest.

What I would like to see in the new legislation are definitions of hours of training, including first aid and CPR, defensive tactics training and, if necessary, baton training, with upgrades every year. This would, of course, be for this level 1 proactive guard. Thank you.

1110

The Chair: Thank you very much, Mr. Parker. We now move to the PC side. We have three or four minutes per party.

Mr. Dunlop: Thanks very much, Brady, for coming today and bringing your comments. I understand you do have a written presentation coming as well.

Mr. Parker: Yes. It's fairly substantial.

Mr. Dunlop: I just wanted to ask you for a quick comment on who should do the training. In some cases we've got community colleges making presentations here. Do you think that is the ideal role of a community college, that they should provide and implement all the training that the candidates will need?

Mr. Parker: Not necessarily. For generic training, possibly. For example, the malls have a slightly different mandate on how they do things as opposed to, say, the port authorities, which contract private security. In port authorities, they're driving vehicles, actively patrolling, literally going down dark alleyways. They're dealing with prostitutes and drug dealers. They're dealing with those types of elements. Clearly that is more involved with specialized training than would be, say, a routine patrol, if there is such a thing, within a mall or within the building here. I think specialized areas could not be done by these community colleges.

Mr. Dunlop: You made some comments near the end of your presentation about adding more into the legislation. I think that's where the regulations come in. I don't know if you can always clarify everything you need to know under the legislation exactly the way you want it, so the regulations, which will be drafted as well, would include a lot of that. I don't know if you need to comment on that, but that's the intent of the regulations.

Mr. Parker: An arrest is an arrest in the eyes of the law. Once it goes before the judge, it's either good or it's not. In terms of a lawful arrest, there are set amounts of training periods down at OPC. In terms of physical control tactics, there's a certain amount of time. We don't need to reinvent the wheel on this. It's already there; we just need to transport what is done into the private sector.

Mr. Dunlop: OK. Thanks, Brady.

Mr. Kormos: Thank you, Mr. Parker. Your comments cut to the chase, if you will, of the whole issue here, of what's really being regulated. It's not the rotund, greying security guard in the plaza who's generated concern in the public or in the coroner's inquest; it is the proactive security guard who plays a more police-type role in terms of exercising perceived or real powers of arrest and detention that generated this discussion. You understand what I'm saying, huh?

Mr. Parker: Yes.

Mr. Kormos: Some of us have referred to them as the "wannabes." I've seen these people. They talk like TV cops. They don't talk like real cops; they talk like what they see on TV. They can be downright bloody dangerous. I know that in our culture we've accepted private security personnel arresting people for shoplifting—taking them into custody and waiting for the police to come. In what other areas are you advocating utilizing arrest powers and cuffing people?

Mr. Parker: First of all, the arrest should always be the last thing that takes place. It is never a first option. I'd just like to state for the record that I am not for private security taking over policing functions. I would like to see a clear separation. It goes back to the training and the credibility of the training.

Mr. Kormos: What type of things are you contemplating private security arresting and cuffing people for? We're prepared to live with shoplifting.

Mr. Parker: Theft, assault, drugs—

Mr. Kormos: Drugs?

Mr. Parker: Yes.

Mr. Kormos: Why wouldn't you call the police?

Mr. Parker: In some cases, the police are called, certainly. That is always a first option. I would like to say, just to go back to—

Mr. Kormos: Drug trafficking.

Mr. Parker: Correct.

Mr. Kormos: Somebody's buying some pot at the Eaton Centre. I'm sure it hasn't happened in years. That's what you're talking about, right?

Mr. Parker: Yes.

Mr. Kormos: You'd advocate private security arresting somebody for trafficking drugs?

Mr. Parker: What I would advocate is that if they're going to do it—and they are doing it now—that they be trained to do it.

Mr. Kormos: I can't disagree with that. I'm just concerned, because it seems to me that there are certain things we should be calling the police for.

Mr. Parker: Agreed.

Mr. Kormos: And if I'm going to be busted, I want to be busted by a trained, regulated cop who has high levels of accountability and whose ass is in a sling—it really is—and who's really in deep trouble if he or she strays this much outside the line. You'd rather be arrested by a Bruce Miller than somebody from Bomar Security, wouldn't you?

Mr. Parker: Certainly, if I had to be arrested.

Mr. Kormos: All right. I just wanted to make sure you and I were—if you had your druthers, you'd rather be arrested by somebody from a municipal police force or the OPP or even the RCMP.

Mr. Parker: A professional, yes, somebody who would not use excessive force, somebody who would give, depending on the degree, the respect that every human deserves.

Mr. Kormos: We heard Norm Gardner here today. He talked about the batons, these flick-extension batons. I don't think the police association is in agreement with that. What types of weapons are you advocating security officers being able to use or carry?

Mr. Parker: Intermediate weapons would be the batons classified. There is the straight stick, which the registrar allows, and there is the PR-24, the L-shaped baton, allowed. The L-shaped baton has some fairly substantial issues attached to it, as Mr. Gardner outlined. That's well documented. It's becoming harder to defend within the legal system because of the amount of training required and the updated training required to maintain minimal proficiency with that device. I would like to see in the market that it would be a straight stick or a collapsible baton. A baton is a baton. It doesn't matter if it can be collapsed or—

The Chair: Thank you, Mr. Parker, and thank you as well, Mr. Kormos. I know there are a number of people who would be wishing you to fulfill all your ambitions.

I now move to the government side. Mrs. Sandals.

Mrs. Sandals: You're advocating a very high level of training in use of physical force, training in use of weapons, if we classify a baton as a weapon. I'm wondering how many security officers, security guards, out there right now are currently trained in that way.

Mr. Parker: I cannot speak for all the agencies. I'm certainly aware that we have trained a number of agencies to use these devices, and that is controlled by the registrar at this point. They do have to provide the background of the training instructor, the use-of-force training program involved, the baton training program involved. There is a certification involved, and they must carry an identification card listing the type of baton, even to the degree where they need to inform the local police service of jurisdiction that certain individuals will be carrying that device.

Mrs. Sandals: My understanding is that there are literally tens of thousands; if you take the licensed and unlicensed in-house, we may be looking at 60,000 people out there who are doing security guard work. What I'm trying to get a handle on is, are you advocating that we have 60,000 people out there trained in the use of force and the use of weapons?

Mr. Parker: No. I'm looking at the number one sort of tiered guard system, which would be this high level of guard who basically actively patrols, say, port authorities and so on down the line. There is a provision within the act currently that security officers can carry firearms. Some of them are doing it. I am certainly not advocating that we issue firearms to 60,000 people, or 60,000 batons, or 60,000 sets of handcuffs. What I'm looking at here is, these people are already doing it. The genie's out of the bottle, so let's set a standard of training and hold these individuals and these organizations accountable.

Mrs. Sandals: But what I'm trying to get at—you've described this as, "The genie's out of the bottle." How big is the genie? What sector of the security market would you advocate should have that high level of training around use of physical force and use of weapons?

Mr. Parker: I would suggest anybody who has a significant interaction with the public on a daily basis, whose general function is to interact with the public on a daily basis. This would include your malls; this would include your ports; this would include your railway stations. Those types of groups would have this top level of training.

1120

Mrs. Sandals: What about the retail sector? Well, you said malls, so all the retail sector? By the time we go through the retail sector and public transit and port authorities and those sorts of things where there is public interaction, it seems to me like a significant share of the market that you're contemplating should have this high-level physical force and weapons training.

Mr. Parker: Currently, as it stands, the organization can choose to issue handcuffs to its employees, with no standard of training. That's within the guidelines as it stands now. Again, I'm not suggesting that the individual who sits and watches a monitor will need that training, but certainly if arrest is part of their mandate, if they are arresting somebody, then they do need to have those physical skills in order to carry that forth safely.

Mrs. Sandals: Which maybe goes back to Mr. Kormos's question around what the expectations are in terms of arrest.

Thank you, Mr. Chair.

The Chair: Thank you, Mrs. Sandals, and thank you as well, Mr. Parker, for your presentation and presence.

I believe Mr. Kormos has a request to legislative research.

Mr. Kormos: Perhaps, Mr. Fenson, we could get an idea of—I'm not concerned about the rare private individual who is issued a licence for a handgun. But in the professional arena of security, be it Brink's, who aren't covered, or others, how many private licences are there for handguns, and what is the status of other weapons here? Are there regulations around these batons that Mr. Gardner spoke of? If we could get a little bit of a briefing on that, I'd appreciate it.

The Chair: Thank you, Mr. Kormos. Your request has been noted by legislative research.

RETAIL COUNCIL OF CANADA

The Chair: I invite our next presenters, from the Retail Council of Canada: Ms. Ashley McClinton as well as Mr. Gerry Davenport. As you will know, any time remaining will be shared equally among the various parties. I would invite you to please begin.

Ms. Ashley McClinton: Thank you, Mr. Chairman. My name is Ashley McClinton. I am the director of government relations for the Retail Council of Canada here in Ontario. I am accompanied by Gerry Davenport. He is the project manager on resources protection for RCC. On behalf of Gerry and myself and our members operating across the province, I'd like to thank you for the opportunity to speak and appear before you today. We'll try to move through our presentation quite quickly so that we do have some time for questions at the end.

Briefly, I'd like to give you a little bit of background on RCC for those who aren't familiar. We've been the voice of retail in Canada since 1963, and we represent an industry that touches the daily lives of almost all Canadians. Like most associations, we're not-for-profit and we're funded through our members' dues. Our over 9,000 members represent all retail formats, including mass merchants, independent retailers, specialty stores and on-line retailers. Approximately 90% of our members are small independent retailers, but we also represent all the large mass-merchandise retailers. Over 40% of our membership is based right here in Ontario.

Retail is the province's second-largest employer. We have almost three quarters of a million employees: just over 760,000, to be exact. It's actually a very little-known fact, but we're right behind manufacturing in terms of employment, so that's quite impressive. In terms of scale, we're well ahead of health care, tourism and a variety of other sectors. It's just a huge industry in terms of employment for Ontario, and Canada as well. The retail industry had almost $129 billion in sales in Ontario last year, and has over 85,000 storefronts. So we're truly an industry that touches the daily lives of most Ontarians.

Before turning our attention to the legislation itself, I do want to turn it over to my colleague, Gerry, who is going to speak specifically about loss prevention in the retail sector and help demonstrate why it is so unique.

Mr. Gerry Davenport: Thank you, Ashley.

I appreciate this opportunity to underscore some of the points that will be found in the loss prevention section of the submission that Ashley prepared, and I hope you'll find it helpful.

Retailers are not in the business of loss prevention. Unlike third-party providers of investigative and security services, for retailers there is no profit in making an arrest. In fact, detaining a culprit requires taking two staff off the selling floor until the arrival of the police. However, the cost of doing nothing to mitigate crime in retail is potential business failure, accompanied by the resulting loss of jobs. A retailer once explained to me that his margins were so thin that if someone stole a piece of merchandise off his shelf, he'd have to sell 20 just to cover the cost of the product that was stolen.

All crime prevention strategies in retail are based on the premise that no one is paid to get hurt.

For the past 20 years, the Retail Council of Canada has undertaken annual benchmarking of the financial losses attributed to inventory shrinkage by retailers across Canada. The mysterious disappearance of these assets is attributed to both internal and external causes: employee defalcation, customer theft, administrative errors and vendor dishonesty. Not included under the umbrella of inventory shrinkage are all crimes that are known to have occurred, such as assaults, robberies, break and enter, frauds, counterfeit currency, arsons and mischief.

Inventory shrinkage in this province represents $1.14 billion annually, or about $3 million per day.

Mr. Kormos: Does that include Conrad Black and Barbara Amiel?

Mr. Davenport: That's a different crime.

There are stores in your neighbourhoods that are losing $200,000 or $300,000 every year to theft. On average, retailers spend 0.3% of gross sales to prevent losses from exceeding 1.7%. There are lots of examples of shrinkage rates in excess of 2% or even 3%. Retailers measure success against an improved rate of inventory shrinkage and not on the numbers of arrested persons.

Our last two Canadian retail security questionnaires asked retailers to describe their losses attributed to crime as a percentage of net profits. At a meeting with officials from the Canadian Centre for Justice Statistics from Statistics Canada—and by the way, the retail council sits of the advisory board of the Canadian Centre for Justice Statistics—it was demonstrated by a large national retailer that if crime and the direct related costs of crime were completely removed from their environment, their profits would double.

In Ontario, during 2002, the direct cost of personnel and equipment to mitigate losses to crime was just under

$200 million—that's in this province—or the equivalent of about 2,000 additional police officers on the streets. That, by the way, is about the same budget as Peel Regional Police service, just under $200 million.

Retailers understand it simply makes good business sense to prevent crime. There is a total integration of loss prevention into the fabric of the business to protect people and property from all threats and losses. However, loss prevention strategies inevitably differ significantly across the retail sector. One size does not fit all.

Retailers agree that the protection and response to crime occurring in their businesses is increasingly becoming a business responsibility. The public police are less responsive than in the past. This is of particular concern, as retailers indicate that there has been a marked increase in organized retail crime rings, particularly in large urban areas. Experience indicates that more than 20% of the criminal activity that occurs in retail is directly attributed to organized activities.

In 2003, more than 40,000 people were arrested in retail stores in Ontario for criminal offences. It is important to note that very few WSIB claims, civil torts or criminal complaints related to these arrests were reported. Putting this into perspective, the Toronto police arrest and charge about 70,000 people each year. This is particularly noteworthy when retail investigators have observed increasing belligerence and assaultive behaviour when culprits are being arrested. First-time-caught offenders are much more compliant. People who have been through the system on previous occasions are less compliant.

Retailers have invested way too much in promoting and marketing their companies to risk an incident that would adversely affect public perception. Retailers generally agree that the current climate for investigators involves much more risk than in the past. As a result, they must manage the risk of violence in a proactive manner. Retailers acknowledge the challenge is providing the right tools for investigators to ensure a balance between financial results and the protection of people.

Thank you. I'll turn it back over to Ashley.

Ms. McClinton: I would like to begin my comments on the legislation itself by stating at the outset that RCC and our members support the proposition of having standards in the security guard industry. The retail sector is a major employer of third-party contract security and investigative personnel to augment their loss prevention strategies. We welcome the expansion of standards within that industry.

There are actually a number of areas in the legislation that we feel could benefit from elaboration, and those are all detailed in our submission. But for the brief time that we have today, we're just going to highlight a few key areas that have relevance to our membership.

Firstly, we feel that there should be a clear definition of who is impacted by the proposed changes to the act. As I'm sure you know, the proposed definition of a security guard is "a person who performs work, for remuneration, that consists primarily of protecting persons or property." As a result of retailers' holistic approach to loss prevention touched upon by Gerry, this definition could in fact capture a great number of persons not intended by the act; for example, persons who may work in a loss prevention department, such as administrative staff, would be required to be licensed even though they have no connection with the actual duties of a loss prevention officer.

1130

We recommend that the proposed changes to the act only affect the personnel actually designated with responsibility for responding to criminal activity in the retail environment. That would be loss prevention officers who are solely authorized and responsible for making arrests. To achieve this, RCC recommends that another category, something along the lines of retail loss prevention personnel, be added to the definitions in the act. The responsibilities of retail loss prevention personnel don't easily fit into the current definition of either security guard or private investigator; in most cases there is a large degree of overlap. So the provision in the act that states a person may not hold themselves out to be a security guard and a private investigator at the same time presents a large concern to the retail sector.

A new category for retail loss prevention personnel would not only minimize the misinterpretation of the definition and ensure that the correct persons are being captured by the act but it would certainly recognize the unique role that loss prevention practitioners in the retail sector play.

As Gerry mentioned, for retailers it simply makes good business sense to prevent crime. While loss prevention is part of the business that retailers would prefer not to be a reality, it is. Strategies for maximizing safety and ensuring profitability are integrated into the very fabric of everything that a retailer does and into each company's mission, vision and values. Because the responses to loss prevention come in a variety of types, responsibilities and challenges across the retail sector in all shapes and sizes, RCC and its members recommend that the maximum amount of flexibility be given to allow retailers to adapt to this unique environment in which they operate.

In introducing the act, the Honourable Minister Kwinter stated that the proposed legislation would call for training standards that would have to be met prior to the applicant receiving a licence. Retailers absolutely support training and testing requirements for security personnel, but we do want to ensure that retailers have the ability to choose the delivery of the training that is most appropriate for their needs.

Retailers have already done their due diligence in relation to training for in-house retail loss prevention officers. As Gerry noted, the reputation of retailers is absolutely paramount to their business viability and success in such a competitive environment, and they would never risk anything that would affect their public perception. Significant financial resources have already been invested in training programs to ensure that loss

prevention personnel act with the utmost professionalism and expertise. It is vital that the regulations do not duplicate the considerable financial resources invested in these internal training programs already in place.

We recommend that the government set minimum training standards and allow private training programs to develop around those standards in recognition of these already existing programs. The retail industry should be enabled to develop its own applicable standards, and self-certify.

Lastly, I briefly wanted to take the opportunity to state that retailers are very pleased that security personnel operating in the retail environment have been granted an exemption from the uniform requirement in the act. As I'm sure you can appreciate, a uniform requirement for the retail sector would be absolutely counterintuitive to the goals of risk management and loss prevention that are paramount in carrying out those duties, and it would be very difficult to be discreet if wearing a uniform. A uniform requirement in the retail sector would also create an unwelcoming and possibly hostile environment for customers. I don't think any of us would appreciate security guards roaming the aisles in uniform while we are shopping with our families.

We congratulate the government for recognizing the distinctiveness of retailers through this exemption.

As noted at the outset, retailers absolutely support the proposition of having standards in the security guard industry. When we were invited by the minister to participate on the act's advisory committee to provide advice to the government in order to develop the regulations, we were very pleased to accept. Our members, in particular the resources protection network, which is a group of retailers whose mandate is to support the retail industry by education, communication and advocacy of proactive asset protection strategies, really appreciate the opportunity to work with the government as well as all other stakeholders to be sure we're making Ontario's communities safer.

Thanks very much for your time. We hope that leaves some time for questions.

The Chair: Thank you, Ms. McClinton. We have two minutes in total. Mr. Dunlop.

Mr. Dunlop: A quick question to Gerry, please. Thank you for being here. You mentioned something about the loss was $200 million a year in Ontario?

Mr. Davenport: No. The cost of keeping the losses to $1.4 billion is just under $200 million.

Mr. Dunlop: How many police officers did you say that would hire?

Mr. Davenport: Two thousand, approximately.

The Chair: Mr. Kormos.

Mr. Kormos: Your comments are consistent with those made by Mr. St. Jean earlier this morning, and they're very important ones, because again, we know what we're trying to respond to with this legislation. We're trying to respond to the aggressive, front-line, private security personnel that caused the grief, for instance, during the apprehension of a shoplifter that resulted in his death. We're not talking, in my view, about in-house systems designed to develop strategies, policy and design structures internally to control shrinkage. Right? That's a problem.

As we hear from folks, the bill becomes increasingly problematic—section 35, folks—because you made a comment about how pleased you were that loss prevention people, floorwalkers, don't have to wear uniforms. But contrary to what we were told—this is why I asked—"Every person who is acting as a security guard or holding himself or herself out as one shall ... identify himself" when asked. I put that earlier and I was told it's only when they're holding themselves out—to wit, identifying themselves—as security. Oh no, when they're acting as one, they still have to identify themselves, when asked, as a security guard.

Isn't that as bizarre as asking a floorwalker to wear a uniform? Although in some instances—as I say, the deterrent effect, the deterrent impact—you might want to put your people in uniforms and give that baton, some Tasers.

Mr. Davenport: I don't think so.

Mr. Kormos: I understand. But do you have concerns about their having to identify themselves, even when they're acting as security guards, when asked?

Ms. McClinton: We feel that clarification should be added to what "holding yourself out to be" means.

Mr. Kormos: I think that will be cleaned up by the time we finish the committee hearings.

The Chair: One remaining question from the government side. Mr. Delaney.

Mr. Delaney: I'd like to ask you a question I've asked a few other deputants, and that is: If it makes, to use Gerry's comments, good business sense to prevent crime, I'd like to ask your opinion on to what degree the Retail Council of Canada suggests that its members invest in the training of their security personnel, and secondarily, who do you feel should provide the standardized training as proposed in the bill that you said you'd support?

Ms. McClinton: I can answer that. First off, this is an issue that our members take very seriously. They're very committed to in-depth training. We have a well-developed critical incident guideline that members of our resource protection committee follow already. So in terms of who should be responsible for it, the fact of the matter is, this type of very in-depth training is already being accomplished by the retail sector, and it is done in-house by professionals. We would seek to eliminate any duplication of that with the act, and are requesting minimum standards so that the training that already takes place in-house can continue and can adapt to the special retail environment.

Mr. Delaney: But the in-house training, just to be clear, is done at the employer's expense.

Ms. McClinton: That's correct.

Mr. Davenport: And rather than use of force training, we really see prevention of violence in the workplace training, teaching the folks to disengage rather than to get embroiled in assaults.

The Chair: Thank you to the Retail Council of Canada, Ms. McClinton and Mr. Davenport, for your presentation and your presence today.

UNITED STEELWORKERS, LOCAL 5296

The Chair: I now invite our next presenter, Mr. Bonsu, president of the United Steelworkers union, Local 5296, and company.

Mr. Bonsu, just to remind you and your colleague, you have 15 minutes in which to present, and the remaining time will be distributed equally afterward for questions. Please begin.

Mr. Osei Bonsu: My name is Osei Bonsu, and I would like to first of all thank Debra Adair for making it possible for me to speak here today.

I'm the president of Local 5296 with the Steelworkers union. I represent approximately 4,000 security officers in Toronto. I myself worked as a security officer for five years before I became the president of the local. My activity as the president is to listen to the complaints of the security officers day to day. So I have heard enough complaints from these officers to say that I agree with what the government is trying to do to improve the security industry. The only concern I have is that it does not go far enough to prevent abuse of these poorly paid security officers. If I say that doesn't go far enough, I'm looking at a system that will legislate the stakeholders to avoid taking advantage of these security guards. The Steelworkers have standard information that we always maintain and that is why I am here with my staff rep, Lawrence Hay, to talk to you about those issues.

1140

Mr. Lawrence Hay: Thank you, Mr. Chair and committee, for the opportunity to speak to you today. As Joe stated, I'm the staff representative with the United Steelworkers and I'm responsible for servicing the security sector in Toronto. I also led the bargaining in 2004, the province-wide bargaining in the sector.

What we want to do today is put a little bit of a human face to the issue of security and the issues that they face on a day-to-day basis. We appreciate and commend the government for the positive step forward with Bill 159, but as Joe said, we have some current concerns and we believe it doesn't go far enough. We really believe strongly that it needs an employment standards component to be successful. Something has to be done to stabilize the terms and conditions of employment. We have a written submission that deals with a lot of the provisions within the bill that we're going to leave with you so that you can review it, but I want to comment on a couple of areas within the bill.

I want to talk about the impact on collective bargaining and also the training component. We represent approximately 8,000 security guards in the province of Ontario. Approximately 80% of those make less than $10 an hour; 65% to 70% of those people make under $9 an hour. It's relatively low pay for a high level of responsibility. Wages are all over the map between employers and between specific sites out there. Security officers who are doing the same type of work are being paid at different rates. The industry is somewhat different than, say, manufacturing, where you have an employer-employee relationship. In the security sector, you have an employee-employer relationship and we have a client that sits in the background. The problem we face in the sector is that there's a constant bidding war that takes place between the security employers trying to gain clients out in the workplace. At the end of the day, what happens is we get involved in this race to the bottom over employment costs, and it's usually our members who pay the price for that bidding war.

Just an example of the impact that the clients actually have on our members is that Joe may have been working at a site for five years, but the client may come in one day and decide he doesn't like the way Joe smiles any more and ask the employer to remove Joe from the site. Joe could have been at that site for five years and have improved his wages to about $10 or $11 and hour and be moved to a site the next day at $8 an hour. You can imagine the impact that would have on his family as Joe tries to put food on the table.

We've been successful as Steelworkers during the bargaining process over the last number of years in trying to go after specific things that our members needed. Benefits were unheard of in the security sector a number of years ago. Wages were almost consistently at minimum wage. We've managed to push those things up. There's protection language in the agreements now, but we're having problems. We don't feel that we're doing enough. It's been somewhat successful, but not enough. If you want to create a profession—and I think that's what we all want to do. We want to create a profession here that people can look to and say, "I want to be a security officer. There's a future there for me. I can put food on the table. I can retire with some dignity." We're not there yet. We're far from it.

I think that we have to create some minimum standards, so what I'm saying is, in conjunction with the bill that you've proposed, there have to be some minimum employment standards set. We would point you to the Quebec model. In the province of Quebec, they have what's called a "decree" system, which lays out minimum standards for wages and benefits in the collective bargaining process for security officers. That creates more of a level playing field.

I really wanted to comment on the inadequacies of the wages and the terms and conditions of employment out there, but we can't forget why we're here in the first place. The reason we're here is because somebody was killed.

There is a very large training component within your bill. At this point, I understand that the training says "as prescribed," and it will be prescribed by regulation, but we have concerns about that. We could sit here for the rest of the day and tell you horror stories about what our security officers are required to do. I'll give you some examples. We've had security officers required to change

diapers in nursing homes. I've had security officers who had urine thrown at them, who had feces thrown at them, who were hit with garbage cans in hospitals. We've had security guards asked to administer medication and oxygen in nursing homes. We've had our security officers pushing bodies down to the morgue. We've had our security officers requested to shut down boilers in manufacturing plants. Why are they requested to do these things? Because nine times out of 10 they are the lowest person on the totem pole. They are the person who is being paid the lowest wage. So it's a lot cheaper for an employer to have a security officer go shut down a boiler than it is for him to call in a stationary engineer to do it. But think of the impact; think of the people we're putting at risk when these things are required.

We have some grave concerns about the training and what will be required of our officers. We believe that when the training is developed, there has to be clear consultation with all the partners. That includes the unions that represent these people out there; we're not the only union.

We also have concerns about the training in regard to grandfathering what type of experience our people have out there. As you can understand, it being a low-paying wage job, some of these people have taken these jobs to supplement an income or to supplement a retirement income. We have security officers out there who are in their retirement years but need this job to maintain their level of lifestyle. We want to make sure that all their experience goes toward the retraining requirements.

I guess the million-dollar question, at the end of the day, is who pays for the training? If you go back to what I said about wages, I can hear the employers next time at the bargaining table: "Well, we have to pay for all this training now." So again, they'll be trying to drive wages further and further down, or we won't be able to seek the improvements we need. Again, if it's the aim of the government—and it's certainly the aim of the Steelworkers—to improve the lot in life of the security sector and make it a career for people, so that people can go out and say, "I want to be a security officer. This is the type of job I'd like to do. I like working with people; I like to do these types of things," then we have to create more of a level playing field.

Right now, when we go to the bargaining table, we have trouble convincing the employers to do the necessary health and safety training that's required under the Occupational Health and Safety Act, never mind additional training. So I'm hopeful that the government will be cognizant of that fact and push toward making the training requirement specific and consult with all the partners.

Just to conclude, again I'll say that it's a positive step, but we need to move it forward more. We'll work with the government to make positive change. We appreciate the fact that you're allowing this consultation. The Steelworkers, over the last number of years, have made improvements to the industry. We've raised the bar; we know that. After the last set of bargaining, we now have a pension plan in place. But it's very minimal, and the ironic part of this whole thing is that when we go to the bargaining table, we're not fighting for dollars; we're fighting for nickels and dimes in raises. That's what 1% or 2% of a person's total wages is. It's not a dollar; it's 20 cents. When we negotiated the pension, the pension really amounts, on average, to 10 cents an hour. If anybody in this room goes around and tries to buy a pension for 10 cents an hour, you know you won't get much. We know it's a starting point; we know we have to build. But we're trying to make this a career of choice, that there's some sort of future to it.

Having said that, I thank you for your time. Hopefully, there's time for some questions.

The Chair: Thank you very much, gentlemen. We do have time for questions, and I'll begin with the government side.

Mrs. Sandals: I haven't had a chance to go through all your detailed recommendations here, so we may want to talk a bit about that. You caught my attention with the reference to security guards being asked to give meds or oxygen, which seems to me quite odd. Is that in the context of a patient who is violent or distressed?

Mr. Hay: I actually had the experience of a woman who came into my office and was very upset; she was visibly shaken. Her job was to watch a patient during the night. She had urine thrown at her out of the bedpan; she had feces thrown at her; she was hit with a garbage can and was actually badly bruised on one side, with no real training on how to handle the violence that took place. In conjunction with that, the employer didn't offer any type of consultation, any type of counselling on how to deal with that. Subsequently, she quit her job; she couldn't do it.

1150

Mrs. Sandals: One of the things we may need to think about in the training context is that if you're dealing with a situation in a hospital or a nursing home, for example, you may have a patient with Alzheimer's or something like this who is mentally confused and violent, and people in that context would need specific training in how to deal with that sort of patient. Is that the issue you're getting at?

Mr. Hay: Training to deal with violence and things, but some of the things quite frankly go too far, like administering meds. The liability issue, I would think, would be unbelievable. As a union we deal with those issues as they come up, but we don't hear about all the non-union facilities and non-union security employers that are out there. We don't hear that they're taking place. When somebody calls us and says, "I was on shift last night and I was required to change a diaper in a nursing home," we say, "Wait a minute. That's not your job. You're a security officer. You're there to secure the facility." You should be able to deal with violent situations, if that's what is required, if that's the level of training you have. The sad part about this is that at $8 an hour, there's not a hell of a lot of training out there, and

our security officers can't afford to pay for the training themselves with that type of income.

Mrs. Sandals: You mentioned in your presentation—I don't have a page number, but you say sections 5 and 7 do not provide for a public registry of either registered or licensed employers. Could you give us an indication why you would want to see a public registry of the employers who are licensed or registered?

Mr. Hay: What happens is that we come across a lot of mom-and-pop operations out there that don't comply that we found—and Joe can comment on this as well—have officers and guards who aren't licensed whatsoever. We'll get calls that say, "We need help. We know we're non-union, but we need some help and some advice." We find out that these guards themselves aren't even registered; they're not licensed.

Mrs. Sandals: Are you looking at this from the point of view of the folks you represent who will now be individually licensed, but need to ensure that they're working for a registered or licensed employer—

Mr. Hay: If their licences are going to become portable—

Mrs. Sandals: —that may have some way of being assured that the person that's offering employment to them is legitimately registered or licensed, so they're not in danger—

Mr. Hay: The proposal is that the licence becomes portable, right?

Mrs. Sandals: Right.

Mr. Hay: With the high turnover you have in the industry and with the movement between clients and employers, yes, our people would need that type of protection.

Mrs. Sandals: Thank you. That's an interesting point I hadn't heard before.

The Chair: Thank you, Ms. Sandals. A brief time remains for a question from Mr. Delaney.

Mr. Delaney: Just one question. I'd like to continue with the theme I've been asking others. You picked up on the cost of training. Do you anticipate that in collective bargaining you might be taking some of the occupation-specific aspects of training and negotiating with lawyers—I mean with employers—

Mr Hay: That's usually what happens.

Mr. Delaney: I misspoke myself. Let's try it again: that you might be negotiating with employers in a collective agreement in order that the job-specific aspects that require unionized help be picked up by the employer?

Mr Hay: We would prefer that the government regulate the training, the specifics and the requirements, similar to what's done under the Occupational Health and Safety Act, and say, "This is the level of training that's required for the specific job you do," and ultimately the employer should be responsible for that.

The Chair: Thank you to our presenters, Mr. Bonsu and Mr. Hay, representing the United Steelworkers.

Seeing no further business, this committee stands recessed till precisely 1 p.m.

The committee recessed from 1155 to 1300.

The Chair: Ladies and gentlemen, I'd now like to formally reconvene the justice policy committee to resume consideration of Bill 159.

ADULT ENTERTAINMENT ASSOCIATION OF CANADA

The Chair: I invite our first presenter, Mr. Tim Lambrinos of the Adult Entertainment Association of Canada. Mr. Lambrinos, just to inform you about the House rules, you have 15 minutes in which to make your presentation, and any time remaining will be shared equally amongst the parties. Please begin.

Mr. Tim Lambrinos: I wanted to first thank you for the opportunity to speak before the provincial committee, as I wanted to let you know that we weren't able to speak at the last request that we had, during your smoking bill. I very much appreciate the opportunity today before the members of the committee.

I wanted to first fill you in on our association. You may not be completely familiar with its objectives and mandates and so on. The association is a not-for-profit organization designed to serve the needs of the adult entertainment industry in Ontario. It involves adult entertainment clubs or strip clubs. By working together with municipalities or various levels of government in association, it serves to better understand, communicate with and regulate the industry to ensure that it is properly regulated and controlled.

One of the initiatives that we have done municipally I thought you'd like to be aware of. It is called the police liaison officer. The province traditionally, and the city of Toronto, has 250 community liaison officers that it has budgeted for. The community liaison officer has a slightly different job description, to work together in partnership with business and various sectors of our society, and forms lasting relationships and better helps control through education and awareness rather than just strictly enforcement.

One of the initiatives that we've undertaken in Peel is specifically this. We've been appointed a senior officer, Inspector Steve Asanin, in the region of Peel, who works in communicating with the industry, so rather than lengthy court delays, which are expensive for the government and so on, it helps to resolve issues and avoid lawsuits.

The reason we are here today—I've distributed a copy of a letter to the members of the committee—is that we have concerns with private security investigative services; in fact, the definitions of what the target providers are. In Bill 159, the word "bouncer" is used. In fact, it says "acting as a bouncer," in terms of a security guard acting as a bouncer. The adult entertainment industry is of the view that it's a municipal function determined under the Municipal Act, where businesses, trades or occupations—and in this case it's a trade or occupation—can be regulated and licensed under the municipalities. You should be aware that there are virtually no

municipalities in Ontario that have chosen to license doormen; I call them "doormen" and not "bouncers." In my presentation to you, the word "bouncer" is an informal term. It should not be used in a legal context and in fact is not defined in your legislation.

Bill 159 talks about a security guard's definition. "A security guard is a person who performs work, for remuneration, that consists primarily of protecting persons or property." An example is "acting as a bouncer."

Well, that's a very interesting definition, because we're contending that a doorman does not primarily protect persons or property. In my experience down at the Canadian National Exhibition, we had numerous gate attendants—they were called "gate guards"—anywhere from 14 to 16 years old perform that function. Under these guidelines, they would fall into that definition; the teenagers who are escorting the animals that are around Wonderland and so on would fall into it. So there's some difficulty with how that is to be interpreted. In terms of property, I'm not certain whether that actually indicates animals. If you're the owner of a racehorse, is that your property? Are the stables? So there are some loose definitions there.

But specifically how it pertains to these clubs, there are managers who supervise their doormen. The managers at times lead by example, and they may fill in from time to time, performing the duties that a doorman may—and waitresses. Often the managers are women, the kitchen managers etc. Are they to be considered security guards as well? We don't think so.

The problem is that, as defined, there needs to be some enhanced definition in terms of the word "bouncer" so that you're not unfairly capturing non-targeted and unintended employees.

I state in my letter, "Specific definitions in the bill referring to the duties of door staff are unclear and vague and as worded may be interpreted to capture non-targeted and unintended employees in various and numerous sectors of commercial industry."

The other point I wanted to make is that the adult entertainment industry is in favour, in general, of some of the regulations and what you're trying to accomplish—nightclubs, shootings etc. However, in the adult entertainment industry, the police will confirm that the incidents of violence are few. In fact, incidents of overindulgence of alcohol are even fewer. It's because of those statistics that I've been able to gather through the police departments that we've been able to get a 40% reduction in the clubs' liability insurance for the adult entertainment industry, and by separating from nightclubs. So there's a real distinction, and I wanted you all to be aware that there is a real difference.

In the third paragraph, "The term 'bouncer' is categorized in the bill, but it is inappropriately and inadequately defined. Its informal use should not be utilized in a legal context." I don't know whether you're referring to escorts who are escorting boxers into the ring. Are they considered to fall under this? Are they protecting persons or property? Will they need to be licensed? Are they bouncers?

We're saying that the doormen who work at adult entertainment clubs are not bouncers, not even close. Their list of duties involves more hosting and working as busboys, glorified busboys. Excuse the informal categorization, but I've given a list of some of their job description. It is monitoring, checking and verifying age requirements of patrons and entertainers; identifying any intoxication by patrons; hosting and directing patrons to open seating; lugging cases of beer from storage; moving furniture at closing to allow cleanup and vacuuming; and assisting in the pickup of empties. Again, those duties do not primarily consist of protecting persons or property. So we are of the opinion, and therefore feel, that the doormen at adult entertainment clubs are exempt from the definitions in Bill 159. They're not included in the list of exemptions, such as peace officers; nor are the amusement parks and construction sites and other forms of businesses that actually have some in-house security, if you will, but their job descriptions are expanded upon.

I have only a few more things, Mr. Chairman.

I wanted to let you all be aware that for the doormen who work in the adult entertainment industry, it's not a career position in most cases. They're doing it to supplement their income, as an extra job, because of the part-time nature and the hours of operation etc. They want to ensure their confidentiality and privacy. This is important for their mainstream job. They may be moonlighting, or however you want to put it. But this is something that is of a serious nature. They only receive training through the LLBO in terms of public safety, and it is sufficient training in identifying things for the public.

1310

The last point I wanted to mention was the criminal record check. We've been able to work together with the city of Toronto with what's called "business licensing thresholds." They actually define what the thresholds should be. In this case, the bill talks about a clean record, and I'm not certain whether "clean" means zero convictions; it could mean a number of things. It's vague and ambiguous. However, we would suggest that some licensing thresholds be put in place, such as the criteria that would match these on schedule A.

Again, we'd like to offer the fact that we're here to work together with the province. If a form of registration needs to be put in place, we already have that system in place for the entertainers by ensuring that they're all of adult age requirement and so on. We're capable of working together. We'd like to pursue a self-regulatory style of approach for the industry. By working together and partnering with the various levels of government, we can form lasting partnerships and save unnecessary municipal costs. There is a registration system that would probably adequately conform to that.

That's my summation, Mr. Chairman. The last point I'd like to make is that we are sending a letter to Mr. Gerretsen, you should be aware, of municipal affairs to request a separation for massage parlours. Under the

Municipal Act of the Eves government, there was a combination of adult entertainment clubs with massage parlours, and we feel that there's a distinctive difference. We do not want to have the entertainers clumped with massage parlours in the same category. We have had the municipalities able to write up separate schedules, but the problem is that the current Municipal Act determines massage parlours as entertainment, which they are not. They may be adult businesses, but they're not a form of entertainment, or shouldn't be. I just wanted to let you be aware that we are sending correspondence to Mr. Gerretsen.

The Chair: Thank you, Mr. Lambrinos. We have a brisk one minute per party. I would just invite you, should you want the committee members to have a look at the board presentation that you've brought, I will direct the clerk to pass it around, should you wish.

Mr. Lambrinos: Yes.

The Chair: Mr. Dunlop?

Mr. Dunlop: I have no questions.

The Chair: Mr. Kormos?

Mr. Kormos: I'm inclined to agree with you, in many respects, with respect to bouncers. One of the most shocking things is that it's an Americanism. At least we could have used the proper British word: a "chucker-out." The problem is, when the statute doesn't define the word and when there's no legal interpretation, the courts will refer to the dictionary. Here's OED: "bouncer: one engaged to eject undesirable or unruly persons from a saloon, ballroom etc."; a chucker-out, in the British form.

I think there's a problem here. You talk about the primary activity. For most bouncers I know or have known, their primary activity isn't bouncing. Sure, they're called upon, if somebody is starting a fight, to pick them up by the scruff of the neck and escort them gently to the front door, but that's not their primary activity. There are very few places that I know of that have a bouncer who is a 100% bouncer, or 90%. It's incidental. The fact that he's got biceps the size of tree trunks is totally irrelevant. So I think the government has got a problem here.

The other problem we've got—and you've raised an interesting point. Liquor establishments are acting in compliance with the LLBO in terms of regulating the consumption and the age. It seems to me we should be very cautious about regulating a role that is at least indirectly called for by statute under the Liquor Licence Board without some direct involvement of, quite frankly, the Liquor Licence Board of Ontario and the prospect that it should be them that regulate the people who perform this role. I think those are some of the points you were trying to make.

Mr. Lambrinos: Yes. If I can expand on that, the LLBO already licenses the establishments, as well as the cities, so they are working in a licensed premise, and there are bylaws that conform to that.

Mr. Kormos: We should be talking to the LLBO. I don't think we should be acting unilaterally with respect to booze joints.

The Chair: Thank you, Mr. Kormos. We'll now move to the government side. First question, and possibly the only remaining question, Mr. Delaney.

Mr. Delaney: Thank you. I notice you didn't dispute Mr. Kormos's characterization of "chucker-out." Do doormen's duties ever include enforcing order or expelling unruly patrons?

Mr. Lambrinos: Rarely, in adult entertainment clubs, and it has to do with the distractions, the price of the beer and the facilities. The police will confirm those statistics—there are few acts of violence.

Mr. Delaney: In the very brief time remaining to me, then, what common security-related skills exist between doormen and private security guards?

Mr. Lambrinos: The common security area is that some do both, but the reality is that the majority of them working as doormen are not full-fledged security guards. They're supplementing their income. The security skills that would be common to both—I can't generalize, because I'm thinking of some doormen who are smaller, they're more a host in some of the clubs, and they work just as well. There's not a real need for a major security issue at adult entertainment establishments.

The Chair: Thank you, Mr. Delaney, and thank you to you, Mr. Lambrinos, for your presentation.

CANADIAN SOCIETY FOR INDUSTRIAL SECURITY INC.

The Chair: I would now invite our next presenter, Mr. Brian Robertson of the Canadian Society for Industrial Security, if you might present yourself in 15 minutes. The remaining time will be distributed evenly afterward. Please begin.

Mr. Brian Robertson: Thank you, Mr. Chair. I'm here with the Canadian Society for Industrial Security. I'm the regulatory affairs adviser to the society. I'm a Vancouver-based security trainer and consultant and, up until not long ago, was the manager of the private security program at the police academy at the Justice Institute in BC. In that capacity, I was responsible for the administration of the mandatory training program for licensed security personnel in British Columbia.

CSIS has been in existence in Canada for just over 50 years. We are a broad-based industry advocacy organization. A lot of our efforts, particularly in the last 10 years, are focused on standards in the industry. We have over the last 10 years developed a fairly comprehensive system of professional certification and in the last few years have been delighted to have had the opportunity to work closely with several of the community colleges in Ontario in order to have our first two basic levels of professional security certification incorporated into some of the training programs that they do.

We have a brief submission to make with respect to Bill 159. The Canadian Society for Industrial Security is broadly supportive both of the Ontario government's decision to undertake private security regulatory reform and of the content and direction of Bill 159. If we have

any general criticism of the new Private Security and Investigative Services Act, 2005, apart from believing, as we all do, that it was too long in coming, it would be that the act is perhaps a bit too timorous in its approach. The province could have, and arguably ought to have, gone even further than it has. We have six particular recommendations for your consideration:

Recommendation 1: that many of the key provisions of the reform package which are to be rolled out as regulations and policies ought rather to be enshrined in the act itself. There are several measures that the government has suggested it's going to take by way of regulation and/or the operation of policy, rather than by way of including them in the act. Some of these have already begun to take. However, CSIS feels that it is so important that these measures be taken—and taken soon—that we recommend that the government consider enshrining them as provisions within the act itself. They are: (1) the creation and ongoing maintenance of an industry advisory committee to provide counsel to the registrar; (2) the implementation of an industry code of conduct; (3) mandatory training and/or testing for all licensees; (4) mandatory physical use of force-skills training for licensees whose duties are understood to include the use of force; (5) mandatory periodic retesting and recertification; and (6) mandatory use-of-force incident reporting.

The business of law-making always involves working out the fine balance between the certainty of legislative enactments and the flexibility of regulations. But the fact that we do enshrine some provisions in statute amounts to a tacit admission on our part that some provisions are so important that we don't want to leave them to the perhaps shifting priorities of various governments and ministries that may come and go. All of the provisions that we've just set out are provisions that we feel bear such a weight of importance.

1320

Recommendation 2: that the definition of "security guard" be amended to include any employee whose duties are understood to include the forcible apprehension or ejection of individuals who are found either trespassing on and/or committing a criminal offence on an employer's premises.

Patrick Shand died because two ordinary store clerks didn't know what they were doing when they were forcibly restraining him. If Bill 159 doesn't address this fact, it will fail to adequately respond to the circumstances of Patrick Shand's death. Following the Shand inquest, the coroner's jury recommended mandatory training in arrest and control tactics for store clerks who were expected to make arrests. CSIS supports this recommendation.

The security guard training envisioned under the current draft of Bill 159 won't save the next Patrick Shand if the people arresting him are store clerks. And to those who would say, "We can't give that kind of training to every store clerk in the province," we would answer that you don't have to. All an employer has to do to get his staff exempted from this kind of training requirement is to tell that staff clearly and unequivocally not to arrest anyone. We'd like to respectfully submit that language of the sort that we've employed in this recommendation, which references individuals whose duties are understood to include forcibly restraining or forcibly ejecting people, may be a useful tool in resolving some of the issues that have come up already this day, in previous presentations around who needs to be regulated under the act and who doesn't.

Recommendation 3: that a provision be added to the act which ensures that the registrar will have enough investigators in the field to effectively enforce the provisions of the act by setting a maximum permissible ratio of investigators to licensees, as well as setting out a minimum number of investigators that must be employed by the government at any time. This recommendation also echoes the recommendations of the Shand jury. It's axiomatic that having a regulatory scheme which cannot be enforced is no better than having no regulatory scheme at all. An industry of 50,000 licensees and a 25%- to 40%-a-year turnover rate can't be effectively regulated by a handful of field investigators. But of all the things you need to do to implement regulatory reform, securing funds for extra ministry staffing is always the hardest. Convince us—the industry and the public—that you are serious about changing things. Commit to having enough investigators on the job by making it the law that there will be enough investigators on the job.

Recommendation 4: that it not be an offence under the act, punishable by a $25,000 fine and/or a prison term of up to one year, for anyone licensed under the act to use the word "officer" when referring to a person who performs work for remuneration that consists primarily of protecting persons or property. The terms "security guard" and "security officer" are as widely used and as interchangeable in the ordinary parlance of people, both inside and outside of the security industry, as the words "automobile" and "car." CSIS supports neither the idea that you can get people to stop using the term "security guard" by licensing security guards as security officers nor the idea that you can get people to stop using the term "security officer" by making it the law that you have to call security officers "security guards."

Furthermore, the government may grow to regret a statutory injunction against the term "security officer" if it follows through on its promise to introduce tiered licensing and is casting about for sensible names to assign to security personnel at each of the different tiers.

Recommendation 5: that the committee urge the minister and his staff to harness the momentum of the last year and a half and use it to ensure that the process of regulatory reform is followed through to the necessary conclusion that will only occur once regulations are in place and fully implemented.

The task before the standing committee on justice policy is to prepare Bill 159 for third reading rather than to determine what will be contained in the regulations

under Bill 159. However, CSIS would like to make the following recommendations with regard to what will come out in the regulations for the record:

(1) As much as possible, everything that you do in Ontario—whom you regulate, what licence categories you use, what terms you use to refer to the individuals working in different occupational categories, what occupational competencies you require them to have, how you're going to measure whether or not they possess those occupational competencies, all of these things—needs to be done in a manner which is as much in harmony with the other provinces as possible. CSIS feels very strongly that we need to have national training standards and, since it's a constitutionally difficult thing for the federal government to do that, we encourage provincial governments to work very closely together in order to arrive at de facto national standards, or at least at harmonization.

(2) We must move as quickly as possible to tiered licensing.

(3) We must resist the temptation to back down from our commitment to deliver adequate use-of-force skills training to every single one of the thousands and thousands of security personnel in Ontario who are required to use force in the course of their duties, even though setting up the means of delivering that training is going to be an enormously difficult and expensive undertaking.

(4) And we must ensure from the outset that whatever mechanism we set up for training and testing is robust enough to allow us to be satisfied that licensed security personnel continue to possess the occupational competencies necessary to do their jobs. There must be periodic retesting and recertification.

Finally, recommendation 6: that the Legislature turn its mind to what additional strides forward should be made the next time private security legislation in Ontario is revisited, and let us hope that it's not in 35 years. The reforms encompassed by Bill 159 are enormous, more than enough to keep everyone busy for a long time, but there are some areas of regulatory reform the province has elected not to delve into at this time.

For the record, CSIS would like to encourage the province to keep these ideas in mind for the next time it turns its attention to private security and regulatory reform. In particular, the province should consider more thoroughly the public interest objectives to be attained by applying the provincial regulatory scheme to other sectors of the private security industry, such as security consultants, armoured car guards, alarm companies, CCTV companies and locksmiths.

Secondly, the province of Ontario should watch with interest the bold experiment the province of Quebec is undertaking with the creation of le Bureau de la sécurité privée, an industry-based provincial licensing board, and consider more thoroughly the desirability of permitting the private security industry a more formal role in its own regulation than that which can be achieved through mere participation in an advisory committee.

We thank the members of the committee for allowing us the privilege of participating in this enormous, and enormously important, undertaking. We respectfully tender our comments and recommendations in the hope that they may serve you in your deliberations. Thank you for listening to us.

The Chair: Thank you, Mr. Robertson. We have 90 seconds per party for questions.

Mr. Dunlop: Thank you very much, Mr. Robertson. You covered a lot of area in your presentation. I was interested in your comments on the Shand inquiry and the lack of dealing—I mean, there were 22 recommendations in the Shand inquiry, and it's my opinion that this bill deals with most of those in regulation as opposed to dealing directly with them. Is that you how you feel the bill deals with them?

Mr. Robertson: I'm fairly conversant with the Shand recommendations and I think the plans for regulations and policy cover off just about all of them. But the two I articulated, one addressing the issue of a store clerk who isn't a security guard, isn't a loss prevention officer, but who has been given to understand by his employer that he's supposed to tackle shoplifters—the current plan doesn't address that, and it was store clerks who were sitting on Patrick Shand in that parking lot. The second that I wanted to emphasize is that the Shand jury said that you've got to have enough people out in the field; you've got to have the forces in the field to enforce this. The number of investigators that the registrar has available now isn't enough. It wouldn't be enough if it was doubled or tripled, given that we're going to double the size of the regulated industry.

The Chair: Mr. Kormos.

Mr. Kormos: I'm concerned; yes, the utilization of the words "security officer" is what helps blur the difference between police and private security guards. This is getting way, way off field, in my respectful view. I suppose your acronym of CSIS would be just some—I'm sure it was an accident.

Mr. Robertson: We were there first.

Mr. Kormos: Look, why are we interested in security staff for Microsoft or IBM, for any other number of companies that are what I would call white-collar security personnel, who I believe would be caught up in the scope of the definition here of security guard because they work for remuneration protecting property or persons? We had some folks here, Mr. St. Jean and the Retail Council of Canada, who talked about the security internal in their operations. We're concerned about the parapolice out there. It is Shand and similar incidents that give rise to this bill, the bill of Dunlop and Levac amongst others; the wannabe security guards running around like freaking—black-helmeted, the black sunglasses with the jackboots. That's what we're concerned about, and the blurring of the distinction between public police and private security guards. So, for the life of me, I don't know—we're getting this information and it's valuable. But I think we're getting on to incredibly dangerous turf when we're talking about this macro, broad, pan-security regulation

when the problem is in those parapolice. That's all I'm going to say.

1330

The Chair: I now move to the government side. Mr. Delaney.

Mr. Delaney: With regard to the standard training for security guards, who should deliver that training? Should it be community colleges, employers, trade unions?

Mr. Robertson: After 10 years of working with the mandatory program in BC, I'm strongly of the opinion that the best way to get a defensible standard that you want is to have the province, the registrar or the ministry focus on having really good, defensible measurement and testing of whether people have the knowledge and the competencies.

Before that, though, in terms of how it's delivered—as much flexibility as possible: private training schools, guard companies themselves, community colleges. You've got 50,000 people. In the first two years, you're going to have to train about 80,000, and after that, about 20,000 a year. You're going to need every trainer you can lay your hands on.

But the key, the way to maintain it as a provincial standard, is for the province to keep a tight hold on the testing, measurement and certification at the tail end of the training.

The Chair: Thank you to you, Mr. Robertson, representing the Canadian Society for Industrial Security.

ONTARIO PROVINCIAL POLICE ASSOCIATION

The Chair: I would now invite our next presenter, Mr. Walter Tomasik of the Ontario Provincial Police Association.

I remind you, Mr. Tomasik, you have 15 minutes in which to present, and as you've just seen demonstrated, the remaining time will be divided equally amongst the parties. Please begin.

Mr. Walter Tomasik: Thank you, Mr. Chairman. I do have sufficient copies of my presentation for the committee.

The Ontario Provincial Police Association thanks the government for providing it with the opportunity to address the committee on this very important issue. As you know, my name is Walter Tomasik. I'm the chief administrative officer for the Ontario Provincial Police Association, and I have also been a police officer for over 30 years.

The Ontario Provincial Police Association is the representative bargaining agent for over 5,400 uniform and 2,400 civilian members of the Ontario Provincial Police. Members of the OPP provide policing services to those areas of the province that do not have municipal police forces. In addition, the members of the Ontario Provincial Police provide investigative services to assist municipal forces, on the direction of the Minister of Public Safety. Our association is committed to promoting the interests of front-line officers, and upholding and improving the professionalism within policing that the public expects and demands of police personnel.

The proposed legislation, An Act to revise the Private Investigators and Security Guards Act and to make a consequential amendment to the Licence Appeal Tribunal Act, 1999, is a needed tool for providing accountability and oversight of the private investigators and security guard industry throughout the province of Ontario. The new legislation, through the regulations, provides for the establishment of a code of conduct and a public complaints system, development of training requirements and establishing standards for uniforms, equipment, and vehicles utilized in the industry.

The OPPA supports Bill 159, and encourages the minister to establish as soon as possible the regulations identified in part VIII of Bill 159. As previously indicated, the association is supportive of legislation that speaks to providing accountability and oversight of the private investigators and security guard industry throughout the province of Ontario. This industry has experienced dramatic growth during three decades without proper regulation. The roles of police and private security must be clearly defined. In doing so, public safety and security in Ontario will be greatly enhanced, along with the industry, providing accountability to the public.

The Ontario Provincial Police Association supports legislation setting recruitment and licensing standards for all employees and employers in the private security industry in Ontario. Community safety in Ontario demands that all individuals in the industry undergo thorough background checks and be subject to provincial licensing.

The association believes that a code of conduct is an essential component of the proposed legislation. The code of conduct should include minimum ethics standards and regulatory provisions which are accountable and enforceable, similar to those found in the Police Services Act. An excellent reference for the committee may be the report prepared by the honourable Mr. Justice Wallace T. Oppal in 1994, entitled Closing the Gap, in which Mr. Justice Oppal outlines recommendations which regulate competence and accountability for both non-police employers and employees.

The association supports an independent oversight body to deal with complaints by members of the public. A member of the public must be able to make a formal complaint to the registrar regarding a contravention of the act or regulations, or a breach of the requirements of the code of conduct.

Mandatory training requirements is another area which the Ontario Provincial Police Association believes should be addressed through regulation. Mandatory training, including use-of-force training, is a must component of any training program. We also believe this should be included with instruction on the legislative powers of private security. The training should have a component of public liability awareness on the industry, with information on Criminal Code authority pertaining to civilian powers of arrest and other acts, such as the Coroners Act and the Highway Traffic Act. All training should be

commensurate and accredited with the type of function performed, and tied in with the licensing system.

It is the position of the association that police and private security uniforms should be completely distinct from each other. Security uniforms must not contain any shoulder patches or insignia resembling police uniforms. We do not believe it is in the interest of community and public safety to arm or equip private security with any type of weapons or use-of-force articles such as handcuffs and batons. The use of canine by security agencies should not be allowed unless there are strict regulations regarding use of canine and certified, accredited training for all canine handlers. Vehicles utilized by the industry should not resemble police vehicles in any form. The use of roof bars on private security vehicles should be prohibited unless used in specific locations, such as airports or construction sites. This would ensure members of the public are not confused as to whether the vehicle represents police or the private security industry.

The association thanks the members of the standing committee for providing us the opportunity to appear before it and thanks the committee for their continued efforts in providing public safety for the people of Ontario.

Not unlike our counterparts at the PAO, the association would also like to thank and acknowledge MPPs Dave Levac, Mario Sergio and Garfield Dunlop, who introduced the private member's bill in an effort to address the issues peripheral to private security.

Our association looks forward to your findings and conclusions with respect to the suggested amendments to Bill 159. Thank you.

The Chair: Thank you, Mr. Tomasik. We have 10 minutes to distribute evenly. Mr. Dunlop.

Mr. Dunlop: Thank you very much, Wally, for coming today and for your comments. I think your comments basically follow the path and intent of the legislation, what we expect it to do, and that is getting rid of wannabe police officers with their uniforms and cars, that sort of thing.

I don't know if you heard a lot of the discussion this morning, but it seems there are enough loopholes in the bill or there's enough confusion around the bill that now we're getting into a lot of different stakeholder groups—bouncers, the previous gentleman with industrial security—so we're finding that the bill is moving in that direction and sort of away from the original intent that we all expected under this bill.

I was just wondering if you had any comments on the regulations that should be put in place that would put it back in what we consider to be the police/security guard issue as opposed to seeing it expand way beyond that.

Mr. Tomasik: I think the regulation should address specifically what industries you're looking at. If you're looking at the private security industry per se as property managers and what have you, then that regulation should be entrenched in that. I think our position has always been and will continue to be that the people of Ontario have a right to know who is a police officer and who is not a police officer. There's a significant amount of confusion. When you look at some of the ads and you look at the uniforms and the structure of their equipment, it's very difficult to differentiate between who has lawful police powers and who has not.

Getting back to your question, I think the regulation should say that we're looking at a specific industry. I'm not familiar with bouncers or anything like that, but these are individuals who are given specifically designed tasks to look after property, patrol grounds and what have you, and perhaps there should be a little more definition imposed as to what you're actually looking at.

1340

Mr. Kormos: Thank you, sir. I appreciate your comments and your contribution. You don't believe that any private security staff person should have weapons. That means batons?

Mr. Tomasik: No.

Mr. Kormos: Handcuffs?

Mr. Tomasik: No.

Mr. Kormos: Why dogs?

Mr. Tomasik: I'm sorry, sir?

Mr. Kormos: Why dogs? You say dogs, under the right circumstances. Usually it's rich people with their gated neighbourhoods—it's more a marketing device by these security companies: "We have canine patrols." But why big, mean German shepherds, yet no batons?

Mr. Tomasik: I think in my comments here I indicated that canines, under the strictest of rules—I know OPP canine handlers go for a significant amount of training, weeks and weeks and weeks. What we're averse to is the fact that somebody brings their pet in and treats it as a police dog or as a K-9 dog and travels with it on patrol with no training.

Mr. Kormos: The OPP use canines for what?

Mr. Tomasik: They use canines for arrest, for drug searches, search and rescue.

Mr. Kormos: So what possible use would a private security force have for German shepherds?

Mr. Tomasik: I have no idea, sir. I couldn't answer that.

Mr. Kormos: That's my problem. I have no idea either.

Mr. Dunlop: Can't be a pit bull; that's for sure.

Mr. Kormos: I appreciate it, because I agree with you: A private citizen, which is what a security guard is, shouldn't have weapons. If they shouldn't have handcuffs and batons, why should they have dogs? We just went through a whole exercise about dangerous dogs here at Queen's Park, didn't we?

Mr. Dunlop: Oh, yeah. Bad dogs.

Mr. Tomasik: My only comment, Mr. Kormos, in all fairness, is that if they are to have dogs, then they have to be regulated and have to be under strict training.

Mr. Kormos: We heard that private security are doing drug busts in places like malls and so on in Toronto. That shocked the daylights out of me, because it seems to me that's the sort of thing I'd be wanting police officers to do, for a whole pile of reasons.

Mr. Tomasik: I would think there are a whole number of issues that surround that, and I would think their powers of arrest are maybe in question, the fact that they're searching maybe not under the lawful authority of a warrant. There are a variety of issues.

Mr. Kormos: What's your view, though? Should this committee, in the course of discussing this bill, perhaps consider or contemplate limits on what private citizens working as security guards can do?

Mr. Tomasik: I believe you should. I don't believe that any of their functions should overlap a policing function. Those are clearly two distinct venues. The police have a responsibility to the people in the province of Ontario, and they carry out that function on a daily basis in a commendable way. The private security industry has a place of its own. It has a place to look after property needs and those of the property managers. It doesn't have a policing function.

Mr. Kormos: Thank you, sir.

The Chair: We'll move to the government side.

Mrs. Sandals: We've heard a lot today about the issue of bouncers, for example, and whether that should be well defined, and do we distinguish between people who are primarily checking IDs and people who maybe are identified more as I think Mr. Kormos's traditional definition of "bouncer" from the OED? I'm interested, as somebody who doesn't particularly have a vested interest in where we land, what your view would be of security in bars, at what point we need to click in with identifying these folks as trained security officers and at what point it's more the bartender who's perusing, or the wait staff.

Mr. Tomasik: Thank you, Ms. Sandals. I believe that a lot of the responsibility in the bars lies with the owners and the managers of the bars, and that they are ultimately accountable for what occurs within their facilities. How they prevent that, by having somebody at the door checking ID, that's fine. I'm strongly of the belief, and I've been a police officer over 30 years and been to many bar altercations, that should an altercation occur, you summon the police. You don't take matters into your own hands. That lends itself to all kinds of openings for litigation, for whatever purpose. In many cases, some of these people, as Mr. Kormos indicated earlier, are hired because of their stature and not necessarily because of what they know. They may not know their powers of arrest; they may not know what they can or cannot do. I believe that if there's any type of altercation in any type of licensed facility, then police should be summoned.

Mrs. Sandals: Can I infer that if somebody is hired with some direction toward removing patrons and that sort of thing, you would at least want to make sure they have security guard status and the appropriate training that will go with the new act?

I'm not suggesting we get into altercations, but I'm trying to—

Mr. Tomasik: As I indicated earlier, I believe the facilities have a certain obligation. If it means the removal of a patron because they've had too much to drink, then their obligation is to stop serving that individual, call the police and have them come. There are charges for public intoxication that the police can exercise, whereas the private security people cannot. I think the accountability lies with the owners. The police have an accountability for public safety in the province of Ontario, and if there's an altercation, then police should be summoned.

The Chair: Thank you, Mrs. Sandals, and thank you as well, Mr. Tomasik, from the Ontario Provincial Police Association, for your deputation.

JAMES CARON

The Chair: I would now invite our next presenter, Mr. James Caron, who comes to us in his capacity as a private individual. Mr. Caron, you have 15 minutes in which to make your presentation. The remaining time may be divided among the parties. Please begin.

Mr. James Caron: Good day. My name is James Caron. My talk today is in English, aussi français. Non?

Le Président: Votre chambre c'est le gouvernement de l'Ontario.

Mr. Caron: I'm a lifelong citizen of this great province of Ontario. I was born and raised in Toronto and educated throughout Ontario. I presently live and work in Peel. Mr. Delaney represents me.

To begin, I would like to thank this committee for allowing me to speak.

Your work here will affect how I earn a living. To be sure, I work as a security guard for hire by a private contract security company. I'm not here for my employer; I'm here for myself, an ordinary citizen.

Basically, my duty mainstays are: Keep people safe, safeguard property, and be an information source. The bulk of my time at work could easily be described as being a watchman, because I use a closed-circuit television system to watch, besides periodic foot-patrols around an establishment.

In terms of my training, I'm a graduate of Sheridan College's police studies, Humber College's private security practitioner and supervisory course, and Mohawk College's electronic security. Also, I've had CPR and first aid. My training in use of force was a weekend course at Sheridan College from a Peel Regional Police instructor.

I understand the changes you are suggesting, and I agree with most. But I will say that your change requiring use of force seems like a knee-jerk reaction stemming from an unfortunate incident. Statistically, it doesn't seem to be valid to force an industry as well as many employees working in security to get mandatory training, overnight, for use of force. Indeed, I wonder if I will have to foot the bill on this element of keeping people safe out of the $9 an hour I earn. It seems like another levy I have to pay, like my yearly licence permit fee, my transportation, my training and my uniform.

Everyone seems concerned about the public. But I ask, "What about me?" To most people, I'm a fixture on the premise. Few people know my name. Their regard for me

is slight and their respect for me is minor. If I die on the job, there is no automatic coroner's inquest required, unlike workers in the construction or mining sectors.

My basic tools are my senses, my brain and my notebook with a pen. I have no weapons. My powers of arrest are the same as any other citizen in Canada, but more is expected from me, and that's why a code of conduct is alluded to in these legislative changes pending. Presently, I'm supposed to keep things in line without a mishap. Much like surveillance cameras, I'm supposed to stop crime, but that's a myth. Offenders will take me in stride as an element to overcome, especially if they think I am alone and there is something they want.

1350

You people are going to recommend changes to the law governing me and my peers. It would be nice if there was something tangible for us security people. Your changes to the licensing tribunal seem OK, but please make our licences portable so that we can move among companies readily. Now, I lose my licence if I move on. I have to wait until my new employer gets my information through the system. Any delay—I don't work; I don't get paid.

I wonder why criminals get more rights than me. They have the presumption of innocence guaranteed under the charter. Under this provincial legislation, the registrar "may" inform me on any accusation about my licence. Why not "must," "should" inform me? Where is my right to know? Is there not a right of the accused?

Moreover, there should be better policing on unlicensed people who do investigations such as secret shoppers. They can make reports on members of the public much like a private investigator. Look on the Internet; there are several entities selling services in Canada—Ontario—which infringe on security-type work.

To be sure, I aim to be a private investigator when an opportunity arises with my employer. It's nice that there is a level of licence which allows a qualified individual to be both a security guard and a private investigator. This helps employers in terms of their workload and allows people like me to meet our career expectations.

Presently, the checking of backgrounds is incomplete. People from outside Canada have an advantage simply because background checks can't go back outside where they have lived. To me, this is a major security hole, especially now since terrorism is an attack on our way of life.

Imagine, for example, if an Al-Qaeda sleeper operative worked as a security guard at a downtown complex. She/he meets all the mandatory requirements to be employed at a site. They are earning their $13 an hour remuneration working in security until they are ready to do their thing. What are the ramifications? Interesting.

Presently, the registrar does a good job with the diminishing resources allotted. Being an insignificant speck on the ocean they monitor, I wonder aloud if more finances and bodies would help? And, for example, I wonder why my rights as a licensee are so scarce.

Even with the checks, there are problems using public information from the United States. I've left you a copy there. Basically, you can have a background check and you come up with false positives.

The author of a review reported that the Bureau of Justice Statistics analyzed 93,274 background checks from Florida. Out of that group, name checks turned up 11.7% false negatives and 5.5% false positives. I wonder what rate of negatives-positives exists in the Ontario system.

Additionally, the security industry has a phenomenon which affects the restaurant and tourism industry. Basically, it's high turnover of workers due to low pay. Nowhere in the proposal are rates of pay mentioned. If they need to get the right people for the right job, why is the pay so poor?

Yes, the marketplace sets the rates, but the level of responsibility for the job would suggest a minimum provincial rate. Currently, pay varies from security company to security company with the geography creating influxes such as a higher rate for the GTA.

It seems that a guard can get $12 to $15 an hour working in a hot zone like Toronto. Meanwhile, working elsewhere, the scale of pay starts at "to be negotiated." Does this mean that a security guard working in Kitchener is worth less or does little in comparison to a peer in downtown Toronto?

Historically, other industries had this problem, like the security business today. In January 1914, Henry Ford offered $5 a day—a princely sum—to assembly workers in Highland Park, Michigan, USA. This was more than twice the prevailing wage of $2.34 a day. This economic blunder—if not crime, according to the Wall Street Journal—was bad. But Ford's motivation was neither socialistic nor Utopian. Ever since Ford's assembly line had lurched into motion in 1913, he simply could not keep workers. Turnovers of 370% require hiring 50,000 people a year just to maintain a workforce of 14,000.

I believe the statistics appear to be similar in the security business of Ontario. I see many people come and go. Every day there seems to be a new face. Why? I guess safety and security has an unfair price. Now, everywhere, it seems like bargain-basement discount prices pay. But, pray tell me, what is the cost if an incident occurred? Will you risk your lives for $9 an hour?

Employment services and schools are feeding off this continual job demand for a fee. Private schools can turn out professional security guards in weeks. Provincial secondary institutions and in-house company training takes months, if not years. Perhaps these private trainers should be policed by the registrar rather than the people at the Ministry of Education.

In conclusion, I would like to see several things concerning the act to revise the Private Security and Investigative Services Act: portability for licences; mandatory coroner's inquest status for a security guard's demise on the job; extensive background checks on applicants, not companies; minimum province-wide pay structure based

on Canadian education and experience and/or the CGSB qualification; the registrar to monitor private schools providing security/investigation education; and the right to know on complaints.

Anyhow, thanks for allowing me the right to express my concern about my job. I hope this perspective from the grassroots, a security guard's view, helps you to make things better for all of us.

Le Président: Merci, monsieur Caron.

Il reste encore cinq minutes pour poser vos questions. Nous commençons avec M. Kormos.

Mr. Kormos: Thank you kindly, Chair.

Thank you very much for coming today, because in fact we have been interested in what you and others like you are experiencing out there.

What's your rate of pay?

Mr. Caron: Nine dollars.

Mr. Kormos: What's your annual licensing fee?

Mr. Caron: Thirty-eight, I believe.

Mr. Kormos: You pay $38. What does the company charge for your service? Do you know?

Mr. Caron: No, I don't know.

Mr. Kormos: They don't tell you?

Mr. Caron: No.

Mr. Kormos: What type of security jobs have you had?

Mr. Caron: Everything from watching a hole in the wall—working at Microsoft, by the way—

Mr. Kormos: OK. That's where you watched the hole in the wall?

Mr. Caron: No, that wasn't a hole in the wall—and I disagree with what you said about a need for physical security there.

Mr. Kormos: What did I say about a need for physical—

Mr. Caron: You indicated it's a different type of security.

Mr. Kormos: Yes. I've talked about the computer security.

Mr. Caron: I have news for you. You drive a truck through the wall, you get all the computers you want.

Mr. Kormos: Really? Where? But I'm an Apple guy, OK?

Go ahead; tell us the other places you've worked.

Mr. Caron: A variety of things—never a bouncer. I'm not big enough. Basically malls. I don't like the malls.

Mr. Kormos: How do you distinguish yourself and the type of security work you do from the guys—you heard the OPPA-type guys: driving around in the cars, the canine patrol units, the black glasses, the black uniforms. Do you see different types of security work being worked by different types of companies?

Mr. Caron: Yes, but I have to say I have a supervisor who drives around in a car.

Mr. Kormos: Black glasses and—

Mr. Caron: No, no. He's not paralegal.

Mr. Kormos: You know what I mean: the guys who—

Mr. Caron: But you do have to discern that you have to have some distinction, whether it's a suit or whatever. That's your business. My problem is, I have to pay for that uniform.

Mr. Kormos: How much?

Mr. Caron: It depends on what you guys prescribe.

Mr. Kormos: No, no. What do you pay for it? Do you pay for a uniform now?

Mr. Caron: The shirts are $35; ties are $15. Pants, you get them if you meet the requirements; coats. It builds up. That's what I'm saying. Now, not all companies are like that. Some provide it; some don't. But what you're suggesting in many ways will affect that, and it comes out of my hourly rate of pay.

Mr. Kormos: Do you have handcuffs?

Mr. Caron: Oh, no. I don't want them, either.

Mr. Kormos: Bless you. Thank you very much, Mr. Caron.

The Chair: To the government side. Ms. Sandals.

Mrs. Sandals: Thank you, sir. You mentioned a number of courses that you took, and I wonder if you could briefly tell us how long those courses lasted and what sorts of things you covered in them.

Mr. Caron: OK. There has been an evolution in terms of training for security guards. I started with police studies at Sheridan. It took me roughly four years, doing it in between shifts and work, to get it. That was what they now call the police foundation, with some changes.

From Humber I took a security practitioner course, which basically was offered on weekends—two days—I believe for four or five weekends; I can't remember what it was.

1400

Mrs. Sandals: So that would be about 10 days total.

Mr. Caron: Right. Elements of surveillance, elements of—everything did touch on the law, by the way: the Criminal Code of Canada, private property, a variety of elements. So the legislative base was there; also, the skill sets.

The electronics security course from Mohawk is basically what's out there today—CCTVs, DVMs and so forth—and keeping abreast. I am not an electrician or a technician, but I use this stuff, so I have to use the tools right. I shouldn't be screwing it up so my boss has to pay for it. So that's the reason for that. I do have friends who have taken courses elsewhere, at the private companies and so forth.

I'm very much aware of the Canadian government standards board changes. They used to have two levels; they've floated into one. But that's only a template. That's allowing companies to set up their own training, which I agree with. It gives some structure. The problem is, we have a lot of people—I've worked with people—who have come on and they say, "I've got 16 hours' training." Wow.

Mrs. Sandals: So you've had much more extensive training than a lot of the folks, then, whom you would have been working with on the job.

Mr. Caron: I wouldn't want to comment yes or no, simply because I don't really know. I just know in terms of myself, I see—and I want to do this job, and that's what I've been doing. The problem is, all of a sudden everybody notices that. I would ask you, do you know the guards outside this door? Any of you?

Mr. Kormos: Do we know these guys here?

Mr. Caron: Yes.

Mr. Kormos: I'm always borrowing money from them.

Mr. Caron: I believe that.

We're trained, but everything floats down to the bottom denominator, and I'm it. I'm what you get.

The Chair: Thank you, monsieur Caron, for your presentation, and thank you for coming.

POLICING AND SECURITY MANAGEMENT SERVICES INC.

The Chair: I now invite our next presenter, Mr. Ted Carroll of the Policing and Security Management Services Inc., to please come forward. I invite you to begin your presentation. As you know, you'll have 15 minutes, the remaining time to be divided amongst the various parties. Please begin.

Mr. Ted Carroll: Thank you, Mr. Chair. It's a pleasure to be here today. I've been assured by Mr. Delaney that you have read the information that I sent forward yesterday, so I don't intend to read what's already written. There are additional copies on the table if there are other people that didn't receive a copy of my submission.

I come to you today with a background both in public policing and private security. I served for over 30 years as a police officer at the operational, administrative and senior management level, then went on to a position as a university security director, subsequently setting up my own company, specializing in professional standards and best practices for private policing and security organizations.

Generally, we operate in a number of sectors, including health care, universities, art galleries, airports and port authorities with respect to security at those locations. One of the things I don't do is provide security guard services, investigative services or training programs. We simply provide advisory services.

I'm just going to touch briefly on a few of the key points. There are a number of macroglobal issues occurring that are driving change within the security industry, and you've heard about some of them today. Listed on page 3 of my report are a number of them. I just want to touch on the Law Commission of Canada as one case in point. There is a report that should be out some time in November addressing the overlapping roles of public police and private agencies and, I'm told, will be making about 15 recommendations with respect to professionalization of the security industry.

The issue of legal liability, due diligence: You've heard about, to a degree: Bill C-45. The Occupational Health and Safety Act puts an onus on organizations to protect workers and to protect the people that are affected by the jobs that workers do.

I want to move on to professional standards and am interested in the discussion about the title of "security guard" versus "security officer." My position on that is that it is time to change and move forward. In this day and age, we have a number of people who have the term "officer" in their title, including information officers, employment officers, privacy officers etc. I don't think that calling a security practitioner an officer is going to automatically cause a person to think they're a police officer. In fact, I'm told by regulators that they very rarely ever receive a complaint from the members of the public that a security officer or a security practitioner has been confused with a police officer.

There are some points on background screening, with respect to things like CPIC checks. There are different levels. Checks are available for people working in vulnerable sectors, for example, that police services in Ontario will undertake. They involve checks for persons working with children, the elderly, the disabled etc. In my view, security officers should go through those checks. Contract security can at any time be assigned to work in those kinds of environments and many in-house security officers already do.

I've listed a number of components that I think should be included in training for security officers, and I'm suggesting two tiers: a basic eyes-and-ears security guard level, if you will, and a higher-level professional security officer capable of intervening in higher-level situations.

A number of situations occur in various industries—health care, universities etc.—where security officers have to take some action before the police get there. I'll give you one example. The Ontario Nurses' Association, in a study done a couple of years ago, found that 59% of all nurses are assaulted during the course of their career. That included my own wife; it happened to her twice, once being held by her throat up against the wall by a patient who was high on a combination of medications and street drugs brought in by visitors. If those security guards had a strict eyes-and-ears non-intervention policy, she might not be here today. So there are situations where it's not practical to expect that the police will be there momentarily, and security are in a position where they do have to intervene to the best of their ability to some degree.

That takes us to the issue of use of force, and you've heard a number of references to use of force today. It's interesting that some people suggest that everyone should receive use-of-force training, but not be equipped with things like handcuffs or batons. The use-of-force model was originally set up for police services to articulate why they would use force. As you know, police officers have all the options available to them, including firearms, pepper spray, batons and handcuffs. Security officers being trained on that same model in some cases have a radio and a flashlight. There needs to be some definition of what level of use-of-force training should be available

to security officers at different tiers, based on their response expectation.

I'm going to close now just by saying that I think it is commendable that the government is moving forward with this legislation. I think it's high time that we professionalize the industry. If we're going to attract candidates to community colleges to follow law and security programs, we need to professionalize the industry, including getting rid of the name "guard," in my view. I think it's time that security takes its place among the community safety and security providers, including other stakeholders such as fire, emergency measures people and police.

I'd be glad to answer any questions and, if you have any further to today because time is limited, to touch base with you again at some point in the future, if that would be helpful.

The Chair: Thank you, Mr. Carroll. Nine minutes in total. Mr. Dunlop.

Mr. Dunlop: Thank you very much, Mr. Carroll. You bring some views on this conflicting with some of the other presenters', so I at least compliment you on your concerns: the use of force and the kinds of weapons, sprays, batons or guns or whatever it may be. In my opinion, that's going to be one of the key areas of how we either amend this bill or develop the regulations around it. But I was surprised to hear you say that. What you're saying, then, is that as far as you're concerned, all security officers should be allowed to be trained and to carry arms?

1410

Mr. Carroll: No, that's not what I'm saying. I think there should be two levels. There should be a basic eyes-and-ears level where they don't have that kind of equipment but they are trained on officer presence—how they look, how they stand, what they do when they show up, verbal de-escalation techniques—and they're trained in some soft, empty-hand defensive tactic techniques so that they can safely disengage if they are involved in a situation where their safety is in jeopardy.

The other part of it is the higher level—and it exists now in a number of the sectors I've already mentioned—where security officers have to physically intervene. The use of a baton by a security officer serves a different purpose than it does for a police officer. Security officers, if they have to disengage, if they're in a violent situation or there's a fear for their safety, really have nothing to create distance between them and the individual who is threatening them. A baton, if they're properly trained on it, can be used for that purpose. Handcuffs are necessary if part of the job function is to apprehend, arrest and detain people before police get there. You have a much higher liability on your hands if you try to restrain someone with several officers without any mechanical restraint devices.

So I suggest two tiers. The first one is your night watchman; the second one is your interactive, intervention-capable professional security officer.

Mr. Dunlop: I guess all I'm saying is that that's a contradiction to what we've heard from, for example, the Ontario Provincial Police Association just a couple of presenters before you. They did not believe there was a role for any type of equipment or assistive devices like a baton etc. So that's the challenge I think we're going to have in this committee and in the House in trying to develop this act, because it is an act that we haven't touched for close to 40 years and we need to make sure that we get it right when we do it. I do appreciate your comments, though.

Mr. Carroll: Just one comment, if I might; I don't know if it's mentioned in my paper. The Ministry of Labour in Ontario, in a number of cases based on complaints, has gone into environments and written orders that the use-of-force response options model for police be applied to the functions of security officers, and that's caused organizations to make that kind of judgment call: Where do we want our security personnel positioned on the model and where do they need to disengage? If they don't have handcuffs or they don't have intermediate weapons available, then they should be eyes-and-ears. It should be a non-intervention model where they disengage as soon as the person becomes active-resistant. The definition of "active-resistant" on that model is not high: simply standing up, shouting, going into a fighting stance, throwing a chair around. That would mean all security officers would disengage at that point, call police and direct police to the location.

The Chair: We'll move to the government side. Mr. Delaney.

Mr. Delaney: Ted, welcome to Queen's Park. It's good to see you here. I want to compliment you as well on your fine, well-organized, informative and concise deputation. It's nice to have two consecutive deputations from the riding I'm privileged to represent.

I'd like to ask your opinion on a few points I've discussed with other deputants. I'll just go down the list. You can address as many of them as you can. How should training standards be set and who should set them? Who should conduct training? Should it be community colleges, in your opinion? Should it be employers, should it be unions, and what are your thoughts on that? Also, to what degree should security guards be expected to educate themselves and in what areas should employers expect to bear the cost and responsibility of training their security guards?

Mr. Carroll: Thanks, Bob. First of all, there are a number of models out there already. There are a number of provinces that have mandatory training. British Columbia, as you heard, is one of them. There's also the Canadian General Standards Board in Ottawa that sets the standard for federal procurement contracts for security. I think those are good models to base training on here in Ontario but they need to be built upon. I read somewhere that you were talking about an Ontario-based model and there are things in Ontario that are specific to Ontario that need to be worked in there. For example, the trespass legislation is different in every province. There

are only five provinces where security officers have authority to arrest under trespass legislation. So those things need to be customized.

Community colleges are well placed, I think, to deliver some of the training. There are some good private training companies out there as well and there are some large organizations that may want to get themselves approved, such as universities, where they'll train their own people. I think those are the ways that training can be provided.

I would encourage all security officers to continue their education. That's something that we encourage people to do in any sector. We always did, particularly in public policing, but there needs to be a distinction between the two-year law and security program, which is separate now from the police foundations, and practical training to do the job. If you compare it to police, many of them take the two-year police foundations course; they then go to the Aylmer, Ontario, police college for a number of months. By the time they graduate, as my son just did recently, they've spent nine months of training, including three months of field training. If you compare that to the Canadian General Standards Board training, we're just talking about two weeks of training for security officers.

I think that's a place to start and to build from. I would encourage security officers to follow the law and security program, but that shouldn't be accepted as the basic training.

The Chair: Are there any further questions from the government side?

Seeing none, Mr. Kormos, there are still two minutes remaining.

Mr. Kormos: No, thank you.

The Chair: Thank you, Mr. Carroll, for your deputation on behalf of Policing and Security Management Services.

GEORGIAN COLLEGE

The Chair: I would now invite our next presenters to come forward, Mr. David Dubois and Mr. Peter Maher of Georgian College.

Again to remind you, gentlemen, that you have 15 minutes in which to make your presentation, the time to be divided equally among the parties following. Please begin.

Mr. David Dubois: We've brought copies for the panel.

Peter and I come to you from the justice and public safety institute at Georgian College. We have been asked to represent the justice and public safety coordinators' group from the college system in Ontario to discuss with you the likelihood in the positioning of the colleges offering the law and security administration and police foundations program to focus on the training aspect of the current bill. I'd just like to read to you some of this information.

The community college system in the province of Ontario applauds the introduction of Bill 159 because we believe it will enhance the skill level, credibility and professionalism of the private security industry.

We believe we can play a vital role—that is, the college system—in implementing Bill 159 in terms of the development and delivery of training standards and provincial testing sites.

Colleges currently offer law and security administration and police foundations programs throughout the province that have curriculum exceeding the basic training standards identified in the legislation.

Colleges are in the business of education, training and development, and therefore have the experience to develop core standards for the industry in a timely and responsive manner.

Colleges have the ability to provide Bill 159 training standards in alternative delivery formats, allowing greater access by private security personnel. This may include computer-based delivery, compressed delivery, train-the-trainer models and blended delivery models.

By delivering the training standards through the colleges, recognition and credit can be given, resulting in bridging opportunities for personnel into full diploma programs like law and security and police foundations, as well as clear career laddering opportunities. A number of colleges have articulation agreements with universities to move on to BA programs in law and justice or criminology and so on.

Colleges can provide testing services for certification and recertification because of province-wide locations and experience in providing this service with universities and sister colleges and so on.

Colleges have numerous connections to the private security field from a province-wide perspective because of long-term collaborations between the industry and LASA and PFP programs. A number of our students have field placements within this area, graduate employment—literally thousands of graduates in the province have come from law and security programs and police foundations programs—membership on college advisory committees, college memberships in organizations and associations like the Canadian Society for Industrial Security, guest lecturing and faculty positions.

1420

Bill 159, when implemented, will have consequences that will need to be addressed. A concern that has been raised among the coordinators of our justice programs is that if the bill is enacted as is, student volunteers for our programs—and all of us have a number of volunteer hours expected—may be prohibited from volunteering at civic functions or volunteering on campus for escorts and those kinds of things. It may impact their ability to do that.

We also recognize that the total hours of the training standards at this point are in the area of 50 to 70 hours. From a college perspective, that seems to be light in terms of the content. We would suggest that, even in

terms of use of force, 50 to 70 hours might be the range for that particular standard.

Timelines to implement this are ambitious; however, Bill 159 is visionary legislation impacting the future of private security in the province of Ontario. It will most certainly enhance the professionalism and accountability of the field. The community college system in the province is positioned perfectly to continue to collaborate with industry stakeholders to develop a comprehensive curriculum training package that can exceed standards, be delivered uniquely and provide educational bridges for private security personnel.

Again, we would like to thank you for the opportunity to speak. We'd be happy to answer questions at this time.

The Chair: Thank you very much. We have about 10 minutes remaining. We'll start with the PC side.

Mr. Dunlop: Thank you very much, Dave. I'm going to brag about the folks from my riding. Dave Dubois is a dean—he didn't brag about this—of the Orillia campus. I wish he would have bragged a lot more about the great things that Georgian is doing in all of their sites, particularly Barrie, Orillia and Midland.

Dave, I know you've put a lot of emphasis on Georgian in the Orillia and Barrie campuses. What you're saying is, as we stand now, when this bill is proclaimed and passed and we actually need the training standards and programs put into place, a college like Georgian would be able to put programs in place to handle all the training?

Mr. Dubois: Yes, Garfield. I think we would see the opportunity—again, working with stakeholders, people who are in the business, and certainly direction from the bill—to put together a curriculum package that wouldn't, obviously, be as extensive as a law and security administration program. But we would see the opportunity here, as I was mentioning, and I believe our sister colleges that offer law and security and police foundations programs, to package together the course training standards and have those recognized and accredited within the college that could then be used as credit toward full two-year diplomas. So the person could begin an educational career path that would allow them to get this certification; then they could apply that certification in a block transfer toward diplomas in law and security and police foundations.

We're in the business of developing curriculum. With the provincial standards for law and security programs—all colleges offering their curriculum in the same way, and the same with police foundations—we could actually pull a number of those standards into what we perceive to be the needs of this particular bill. Again, that has to happen with the collaboration of the various stakeholder groups.

Mr. Dunlop: Thank you.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you, gentlemen.

Mr. Dunlop, if the bill passes; we're only in the process of committee. We haven't heard any debate in committee or on third reading.

Mr. Dunlop: I assume it will pass.

Mr. Kormos: Be careful.

Gentlemen, one of the concerns—and it was certainly cited by the Police Association of Ontario this morning and the Ontario Provincial Police Association this afternoon—from the public policing perspective is the need to draw clear distinctions between security personnel and police officers; to wit, public police officers.

I'm inclined toward that position, because the whole difficulty here, what gives rise to this, was not just the coroner's inquest, but problems around very active parapolicing by private firms that hold themselves out as police officers, that present themselves as such, that use police tactics, even the lingo. Many years ago I used to practise court work, and these guys would get on the witness stand, as I've mentioned earlier, and they wouldn't sound like real cops; they would sound like TV cops when they were giving evidence out of their notebooks.

How does it help when the community colleges say, "We will have a security guard program, but it will be so blended with the police program," because you're going to tell me if it isn't, "that you'll be able to apply the credits"? That to me is part of the problem: The people who are in security who—dare I say it?—think they're cops.

The other consideration, of course, was that the police association and OPPA would like to see no weapons or even handcuffs, never mind batons, being used by security guards. Respond to that, please.

Mr. Peter Maher: Mr. Kormos, I've been waiting patiently to respond to that, and it gives me great pleasure to respond to it, because I'm not going to assume speaking for the PAO or the OPPA, having been a past retired member and an executive officer in a police association, having spent 10 years in this division, where your Legislature sits, and another 21 years in the city of Barrie, having been an undercover officer and a doorman in the hotels in Barrie, having run operations responses in the city of Barrie and watching manpower diminish greatly. All those questions you asked—to get to your first point, which I found interesting, about when security guards speak like policemen, there's nothing that makes policemen look more foolish than trying to speak like lawyers, similarly.

Mr. Kormos: The good cops I know don't even try.

Mr. Peter Maher: That's right.

Mr. Kormos: None of the good cops sound like cops on TV.

Mr. Peter Maher: Perhaps. I think what we have to look at is where our students are going. As you've noticed, with the abolition of grade 13, the entry threshold is a lot younger into the community colleges. It's been more than evident in the last two years, such that when they finish their schooling, be it in the police foundations program or law and securities program, they say, "Where am I going to get a job? Where am I going to go?" They go into security. So the more we do to regulate security, make it a worthy occupation, the more we're enhancing opportunities for young people to be-

come employed, to start moving forward. The hiring aspect going into the policing area is five years, on average, from graduation. Police departments cannot absorb the number of graduates. They need to start somewhere, and quite often, in between years, they start in security.

What we're trying to do is disassociate, at least in our college, and make LASA, our law and security, a free-standing program focusing on deliberate security roles, one being corrections and the other being the multi-faceted private security. If we train our people appropriately, certainly the face of security officers is going to change. You won't have the jackboots; you won't have the wannabes. You will have professional security people, which is what organizations like CSIS are trying to promote, which is why we maintain a membership in it, which is how we are able to communicate so rapidly and so freely.

The Chair: We'll now move it to the government side.

Mrs. Sandals: I wonder if I could explore one of the notes that we got here. You're proposing that student volunteers—for example, campus escorts—will be negatively impacted by the legislation. I wonder if you could explain that.

Mr. Peter Maher: When I sat down at the table with Mr. Herberman's office at the very beginning, last February, we were told that licensing would encompass people in charge of property and people, or property and money—property and people primarily. Our students go out and do security details in a volunteer role. They look after people. Across the table from me was the University of Toronto police. They run an escort service for people who are leaving the campus in the late hours and request accompaniment to their vehicles, which is not an unreasonable request given this area and the time of night. That would be prohibited. Are you saying or is the legislation intending that people and students like this should be licensed as well, or should they be exempt given certain situations? That was one concern we have.

If we go for the licensing, is that going to stymie my first-year students? I'm the coordinator for the LASA program, and they're all my kids, basically; you sort of adopt them as you go along. We don't want to see their advancement stymied. We don't want to see their opportunity to become civic contributors stymied. That's the concern referenced there.

1430

Mrs. Sandals: I come from a university town, so I'm familiar with how campus safe walks operate, but I'm confused by what you're saying versus what the bill says. The bill talks about a person who performs work for remuneration that consists primarily of protecting persons or property. If you're talking about volunteers and the bill is talking about remuneration, (a) I'm having trouble reconciling that, and (b) do you actually advertise these students as providing security services, or do you simply advertise that there's safety in numbers, so, "Come and walk with a buddy"? I would be concerned if you were holding out these volunteers as security providers.

Mr. Peter Maher: Remuneration is a question. Sometimes remuneration is offered. A point in fact right now is our Georgian College car show. It's one of the biggest shows of the year. The degree program people are doing the security there. The program is remunerated at I think $10 an hour. It's a way of enhancing their income on their own college grounds and performing a role that's valuable. So that would be prohibited there, should the remuneration aspect come into question.

Mrs. Sandals: But I'm interested in the safe walk.

Mr. Peter Maher: The safe walk is strictly a volunteer thing. There's no payback in that at all.

Mrs. Sandals: OK. As I say, I'm assuming in fact you don't really advertise it as a security service; you advertise it as a safety-in-numbers thing.

Mr. Peter Maher: That's correct. In our community where we're located now, in Orillia, we don't have to advertise. Word of mouth has always been the best advertiser, and still is.

The Chair: Thank you, Ms. Sandals, and Mr. Maher and Mr. Dubois from Georgian College for your presence and your deputation.

CANADIAN BANKERS ASSOCIATION

The Chair: I would now invite our next presenters forward, from the Canadian Bankers Association: Mr. Warren Law, senior vice-president and general counsel, and Mr. Gordon Kennedy, also of the Bank of Montreal Financial Group. Gentlemen, as you'll know, you have 15 minutes in which to present, and any time remaining will be divided evenly between the parties. I invite you gentlemen to please begin.

Mr. Gordon Kennedy: Thank you, Mr. Chairman. I have a short prepared text, and then we can have any discussion after that.

Mr. Chairman and members of the committee, on behalf of the Canadian Bankers Association, I thank you for inviting us to share with you the banking industry's views on the proposed Private Security and Investigative Services Act, Bill 159. As the Chairman said, my name is Gordon Kennedy. I'm vice-president and chief of security for the Bank of Montreal Financial Group. We hope you all have paid up your mortgage loans and interest and such. I don't have any members here. Like you, I'm looking for members; I don't see my MPP here, but I do see some Bank of Montreal customers. With me today from the Canadian Bankers Association is Warren Law, senior vice-president and general counsel and director of security.

May I begin by saying that Canada's banks generally support what Bill 159 is aiming to achieve. We believe that there is certainly a need for professional standards of expertise for both security guards and the hired private investigators who interact with the public. However, we believe that bank employees who perform investigative services for their respective banking groups should not

come within the purview of the proposed legislation. They certainly are not security guards and they have roles that are very different from for-hire private investigators. We are asking, therefore, that bank investigators be added to those exempted in subsection 2(7) of the bill.

Why should this be? The most important reason is because bank investigators have little or no contact with the public. They analyze financial information relating to fraudulent activity and other forms of criminal activity that are directed at banks. They look at patterns and activity in the use of financial accounts and they compile information and reports about criminal or suspicious activity. Bank investigators do not conduct surveillance on individuals, they do not typically interview members of the public and they do not conduct searches outside their respective banking groups, so there is no public protection issue here at all. Our investigators are unlike for-hire private investigators.

There are other reasons for believing that bank investigators should not be included in Bill 159. For example, they are already highly trained and meet or exceed the professional standards in the bill. Also, investigators play a key role in the business of banking itself, especially ensuring the bank's stability, safety and soundness, and by helping to manage risk. So if there is to be an oversight of what bank investigators do, we believe this should come from the federal government, because the federal government has exclusive jurisdiction over banks and banking.

As for the experience, in my shop alone, my investigators have a minimum of 10 years' law enforcement experience before they can be hired. Before coming here today, I looked at my staff here in Ontario, and all of them exceed 20 years' experience on either the Toronto police force, the OPP or the RCMP.

So in closing, I underscore the unique role played by bank investigators. We are not talking here about security guards that are sometimes seen in bank branches and offices. These guards are typically hired from firms that would fall within the purview of Bill 159. Bank investigators do not interact with the public, as I said, and there is therefore no public protection issue. I note that the federal privacy legislation gave our bank investigators exempt status. We believe we should also be exempted from Bill 159.

Thank you, and I now welcome any questions you might have.

The Chair: Thank you, gentlemen, for your very succinct presentation. We will begin with Mr. Kormos. You have about six minutes.

Mr. Kormos: Thank you kindly, because that has been something that has been cropping up during the course of today, interestingly.

The definition in the act: "security guard" means "person who performs work, for remuneration, that consists primarily of protecting ... property." So any level of security within the banking system, within a computer operation like Microsoft, within your credit card divisions—I don't know, but I presume there are whole institutions, whole bureaucracies, dealing with security that in no way come close in terms of the needs, the need to regulate the person who is out there wearing a uniform, who comes into contact with the public, wherein there has to be some standard around adequacy of performance, familiarity with the law and so on.

Mr. Kennedy: Exactly.

Mr. Kormos: Mrs. Sandals, I am also interested in their observation; it is very similar to the Liquor Licence Board role in setting standards, in my view, for policing within licensed establishments.

I find it interesting that they raise the issue of federal jurisdiction, which is a given, in terms of the bureaucracy of the bank and the capacity, interestingly, of the province to regulate not the front-line security, the guy or gal at the front door or delivering the cash, but the internal security.

I think these are problematic, quite frankly, for the bill. Again, our concern, as I understood—if I'm wrong, say so—was the para-policing out there. I'm not happy about it, because I wish there were adequate public policing; I think everybody does. But I'm prepared to accept the current reality. It's the problem with the person out there in uniform performing the public street police function, not these guys and their security systems, not Microsoft and its security system. I'm not talking about the guy at the gate, I'm talking about the internal security that deals with hackers and things like that.

Do we really want to regulate those security personnel? If we don't, we'd better address the definition, because the definition is pretty, pretty clear. Again, I appreciate your saying that you want to be added to the list of exemptions. But if we had a list of exemptions that's three pages long, the problem is with the definition, not with the lack of exemptions.

So I'm agreeing with you, I think your input is incredibly important, and I'm hoping that bureaucratic staff who are here from the ministry, as well as government members, will reflect on the need to address your scenario and within the retail industry. Again, there's security—the people out there, the floorwalkers—but there's also a whole bureaucracy of security at the upper level that deals with shrinkage from within, as well as customer theft and so on, that are not the people we want to regulate, it seems to me. They're not the problem. Why are we purporting to solve a problem that doesn't exist? Thank you.

The Chair: Gentlemen, you have a number of minutes to respond to Mr. Kormos, should you wish.

Mr. Kennedy: Just one thing in your note. Just take First Canadian Place down here, the tallest building in Canada. We have our own bank security guards. In that combination, I have in-house guards whom we have trained a long way, mostly hired from colleges, and they end up being the supervisors of shifts for contracted guards. So the contracted guards work with the in-house guards protecting our assets and whatnot in the bank: offices, computers, money, things of that nature. But when we have an incident, we call First Canadian Place's

building security, O&Y, which has a security force, which then calls the police. There's a whole food chain in there of security professionals doing the same job, but it's the protocols. At the end of the day, bank security are eyes and ears and all we do is call the police. The investigators are doing the things that Mr. Kormos has alluded to, and they're protecting all the inner workings of the bank and your accounts, supposedly, and when it comes to search warrants and surveillance and all that, we call the police.

1440

The Chair: Any further questions, Mr. Kormos?

Mr. Kormos: Thank you kindly.

The Chair: Thank you, then, and we'll move to the government side.

Mr. Flynn: I've got a very similar question. I just want to understand the concern a little better. What you're saying is that the employees you're referring to, who you think are caught up under this proposed legislation, in a typical day would be internally investigating fraud, perhaps theft in the organization. During a typical day, they would have no interaction or very little interaction with the public.

Mr. Kennedy: That's correct.

Mr. Flynn: If they were to discover something amiss or something suspicious, the call would not be to the individual, the call would be to the police more than likely?

Mr. Kennedy: That's correct.

Mr. Flynn: You're saying that type of role is very different from what we've been talking about this morning for the most part, which is security guards, security officers, who do deal with the public on a regular basis, maybe even in a physical way from time to time, and you're saying that role is very different. Are you assuming you've been caught up in this legislation or are you sure you've been caught up in the legislation?

Mr. Warren Law: The problem is that the legislation in effect right now does have an exemption for in-house investigators and security guards, as you may know. That has been removed for some reason, and therefore we're sort of in a limbo, because I think we had always relied upon that exemption. It's gone now. Therefore what does that mean? Does that mean the government wants to regulate the business of banking? I would suggest to you that if this legislation were to go through, the business of banking would be subject to provincial government legislation and I would submit that you would be on very, very thin ice from a constitutional standpoint.

Mr. Flynn: So at this point, you'd be seeking a clarification as to whether that was the intent: to include your employees?

Mr. Law: I think the clarification should come through an exemption specified in the legislation.

Mrs. Sandals: I'm trying to get some clarification on the role of these folks you are wanting to exempt. Clearly, they would not be security guards. The issue is, are they private investigators and should they be registered as private investigators? Intuitively, it seems to me that the work they are doing would involve investigating things that have to do with property offences and that there would be investigation into things, as you say, like fraud that could potentially lead to a criminal investigation and crossover work with the police. So intuitively that seems to me, in my normal use of the word "investigation," that they are doing investigation work. So I'm not clear exactly on why there would be an exemption.

Mr. Law: They're investigators in the sense that they provide analytical work. They compile information; they look at trends; they look at patterns within accounts. You've got to remember that the investigators are dealing with the types of suspicious criminal activity that are very specific to banking: debit card fraud, credit card fraud, mortgage fraud—things that are very, very specific to a financial institution. That provides the link between what they do and the business of banking. Investigators in a bank provide a very, very important function with respect to banks trying to manage risk, and that, I would submit to you, is also a link that makes it very clear that what you're doing here is really regulating the business of banking.

Mrs. Sandals: How would that differ, however, from any other large business which has some internal capacity to investigate and track financial transactions?

Mr. Law: The very significant difference is that under the Constitution Act, 1867, banks and the business of banking are subject to the exclusive regulation of the federal government.

Mrs. Sandals: What you're claiming is that on constitutional grounds, these folks need to be exempt; it isn't on functional grounds.

Mr. Law: We really don't have to go down that road, because I think on functional grounds there's a very clear difference between what bank investigators do and what investigators would do in any other large corporation, because there's no interaction with the public in this case.

Mr. Kennedy: I can tell you that 50% of my investigators' workday is spent on internal theft, investigating shortages of cash, money missing, complaints from customers that their accounts are missing some money. So it's all internal to a bank, and when we get to the stage where we have a suspect, we call the police.

Mrs. Sandals: I guess that's where I'm getting hung up, because clearly the investigation is into criminal activity, eventually.

Mr. Kennedy: Exactly. The other part is, the police officers out there will be working on suspects or a group or an organized crime group. They'll come across some information that they're stealing credit cards or debit cards. They'll come to us and ask us to help, saying, "Look, we've got all these numbers here. Can you analyze these, tell us where these were stolen from, how long they've been missing and how much money's involved?" We provide that information to them on a task force basis. We testify in court with the police when we do these internal investigations.

The Chair: Seeing no further questions, I'd like to thank you, gentlemen, Mr. Law and Mr. Kennedy, from the Canadian Bankers Association and to invite now our final presenter for the day, Mr. Sean MacCormack of the Marriott Toronto, downtown Eaton Centre.

Are you here, Mr. MacCormack? Going once—

Mr. Kormos: What time is it?

The Chair: It's 2:45.

Mr. Kormos: Perhaps a five-minute recess?

The Chair: All right. We'll recess for five minutes in anticipation of Mr. MacCormack.

The committee recessed from 1447 to 1452.

The Chair: Ladies and gentlemen, I would like to call the meeting back to order. Is there any further business of the committee, seeing that our final presenter, Mr. MacCormack, has not made himself available?

Mr. Kormos: To Mr. Fenson, once again. I'm wondering if he would perhaps give us just an example, an illustration, of what sort of bureaucratic security structures corporations have in their Bay Street towers or operating out of head offices. Just pick three or four companies, I suppose, to give us a sense of the number of staff and who's employed in the context of what we've talked about with respect to banks, among other things, including the retail sector, with respect to that internal security. Just to give us, again, a brief overview of what's out there, where people have real jobs.

The Chair: Thank you, Mr. Kormos. Leg. research has noted your request.

Is there any further committee business? Seeing none, I will now adjourn the committee till Thursday, September 22, 10 a.m., at the Four Points Sheraton, London, Ontario.

One final housekeeping note: The clerk of the committee, Mr. Koch, would like everyone's office to communicate with him regarding your personal travel plans for that meeting. Committee adjourned.

The committee adjourned at 1456.

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Président
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr. Michael A. Brown (Algoma–Manitoulin L)
Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)
Mr. Kevin Daniel Flynn (Oakville L)
Mr. Frank Klees (Oak Ridges PC)
Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)
Mr. Mario G. Racco (Thornhill L)
Mrs. Elizabeth Witmer (Kitchener–Waterloo PC)

Substitutions / Membres remplaçants
Mr. Garfield Dunlop (Simcoe North / Simcoe-Nord PC)
Mr. Tim Peterson (Mississauga South / Mississauga-Sud L)
Mrs. Liz Sandals (Guelph–Wellington L)

Clerk / Greffier
Mr. Katch Koch

Staff / Personnel
Mr. Avrum Fenson, research officer,
Research and Information Services

CONTENTS

Wednesday 14 September 2005

JP-32

ISSN 1710-9442

Legislative Assembly
of Ontario

First Intersession, 38th Parliament

Assemblée législative
de l'Ontario

Première intersession, 38e législature

Official Report of Debates (Hansard)

Thursday 22 September 2005

Journal des débats (Hansard)

Jeudi 22 septembre 2005

Standing committee on justice policy

Private Security and Investigative Services Act, 2005

Comité permanent de la justice

Loi de 2005 sur les services privés de sécurité et d'enquête

Chair: Shafiq Qaadri
Clerk: Katch Koch

Président : Shafiq Qaadri
Greffier : Katch Koch

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 22 September 2005

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 22 septembre 2005

The committee met at 1014 in the Four Points Sheraton Hotel, London.

PRIVATE SECURITY AND INVESTIGATIVE SERVICES ACT, 2005

LOI DE 2005 SUR LES SERVICES PRIVÉS DE SÉCURITÉ ET D'ENQUÊTE

Consideration of Bill 159, An Act to revise the Private Investigators and Security Guards Act and to make a consequential amendment to the Licence Appeal Tribunal Act, 1999 / Projet de loi 159, Loi révisant la Loi sur les enquêteurs privés et les gardiens et apportant une modification corrélative à la Loi de 1999 sur le Tribunal d'appel en matière de permis.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, colleagues, good morning to you all. My name is Shafiq Qaadri, MPP. I have the privilege and honour of being the Chair of the standing committee on justice policy. We are here, as you know, to begin our public hearings in this district on Bill 159. I would like to welcome, on your collective behalf, Mrs. Sandals, Mr. Flynn, Mr. Delaney, Mr. Brownell and Mr. Brown from the government side; Mr. Arnott from the Tory side; and Mr. Kormos from the NDP. I would also like to inform you that services for translation are available, as we are in one of the 22 designated bilingual areas in Ontario. Pour votre information, le service d'interprétation est disponible parce que nous sommes maintenant dans une région designée bilingue sous la Loi sur les services en français.

ONTARIO ASSOCIATION OF PROPERTY STANDARDS OFFICERS

The Chair: I now invite our first presenter, Mr. Len Creamer, president of the Ontario Association of Property Standards Officers, to please come forward. I remind him and future presenters that he has 15 minutes in which to present to us. Any time remaining will be distributed evenly for questions amongst the various parties. Please begin.

Mr. Leonard Creamer: Good morning, ladies and gentlemen. Thank you for the opportunity to address the committee. My name is Leonard Creamer. I am the president of the Ontario Association of Property Standards Officers. Our organization represents over 650 municipal employees whose duties include the enforcement of municipal property standards bylaws through the Ontario Building Code Act. I am a former police officer and am currently the manager of municipal law enforcement for the municipality of Clarington, with over 25 years of combined law enforcement experience.

My presentation today is probably a little different from some of the others dealing with this act, because my concerns about the proposed legislation deal with its possible effects on, and extension into, the realm of municipal law enforcement. They are as follows.

Property standards officers operate under the authority of the Ontario Building Code Act. This legislation defines a property standards officer as a person who "has been assigned the responsibility of administering and enforcing bylaws passed under section 15.1" of the act. Nowhere within that act is there an authority to appoint a property standards officer pursuant to a bylaw, nor is there a designation of a property standards officer as a peace officer, and yet the powers of enforcement and entry on to property for our officers in many ways surpass those of a police officer. It is in that respect that we would recommend that the definition of "security guard" and the exemptions that are extended to peace officers be further clarified and expanded.

Currently, a security guard is defined as a person who performs work for remuneration that consists primarily of protecting persons or property. Through their enforcement activities, property standards officers ensure the safety of persons having access to and use of various properties. Without the peace officer designation, our members may fall within the ambit of Bill 159. The same concern holds true for municipal law enforcement officers who have been appointed pursuant to the Municipal Act. While this act allows for the appointment of persons to enforce bylaws passed pursuant to the act, there is again no authority to designate these officers as peace officers.

Municipal law enforcement officers are recognized as peace officers only if they are appointed under section 15 of the Police Services Act. While I realize this is not the intent of the legislation, there is, in my opinion, enough of a grey area created in the definitions of "security guard" and "private investigator" to allow an appeal court to draw the interpretation that we would fall within the ambit of the act.

1020

There are currently numerous provincial acts that deal with and speak to authorities of peace officers and

provincial offences officers. Provincially, the number of persons who are designated in either category runs into the thousands. As you may be aware, provincial offences officers are designated pursuant to the Provincial Offences Act and can be completely separate from peace officers.

There is, to the best of my knowledge, only one definition of "peace officer," and that is found in the Criminal Code of Canada. It includes "a police officer, police constable, bailiff, constable, or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process." Herein lies the problem: Either a peace officer is a person as defined in the Criminal Code, or they need to be separately defined or acknowledged within the provincial legislation.

In Ontario, municipal enforcement is handled by municipal staff, by companies under contract to municipalities as municipal law enforcement officers and by private security companies. Recently I have become aware that some municipalities are designating their in-house security staff as municipal law enforcement officers or peace officers in order to circumvent the need for registration and licensing under the proposed bill. This has created a situation where contract security guards and municipal law enforcement officers are working side by side performing the same job functions but only the security guard is required to be licensed and trained. This brings me to my next point.

When Bill 159 was drafted, there was an assumption that all Ontario provincial offences officers and peace officers already obtained adequate training to a level similar to what is proposed in Bill 159. This is incorrect. There are currently no mandatory requirements for the training of municipal enforcement staff. It is left to the discretion of the hiring municipality to set the minimum acceptable standard of education and competency for these officers. This can range anywhere from simply a grade 12 education and a clean criminal record to a requirement that they have gone through a college, police college or police foundation course.

Given the recent requirements for mandatory training of building inspectors under Bill 124, the proposed requirements for training set out in this act and the existing requirements for police officers set out in the Police Services Act, we believe that the mandatory training of municipal staff becomes a logical extension.

The skills, knowledge and abilities of a property standards officer or of any other municipal law enforcement officer are closer to those required for a police officer than for a security guard. In order to separate these categories, it is recommended that Bill 159 recognize all municipal enforcement officers, whether they be property standards officers, building inspectors, plumbing inspectors, plans examiners, licensing officers, taxi inspectors, animal control officers, tree preservation officers, water and sewer use inspectors—as you can see, the list does go on—and that they be designated as peace officers and therefore exempt from the provisions of Bill 159.

Realizing that in many cases perception is reality, the committee must be aware that this exemption can only apply to property standards officers and other municipal officers whose duties are to enforce the relevant bylaws and provincial statutes and will not include those persons tasked or perceived to be tasked and acting to protect persons or property on behalf of their employer. In some municipalities, municipal law enforcement officers are used to supplement the local police in the enforcement of bylaws in public areas as well as to patrol public parks. They are easily confused with the police, due to similar uniforms, and are clearly perceived as performing security patrol duties on behalf of the city if one were to encounter them. These peace officers would be technically exempt because of their status and classification.

The Ontario Association of Property Standards Officers agrees that there is a definite need to set training standards for security guards and private investigators, and would willingly support the mandatory training of all municipal enforcement officers through subsequent legislation.

OAPSO does offer training and certification for its members through a three-part course endorsed by the province in 1992 through the Ontario Association of Property Standards Officers Act. This act allows the association to offer certification to those members who have met the course training standards. Our course deals with academic and structural issues involved in the performance of an officer's duties, but does not include any reference to confrontation management, use of force or situational awareness. The introduction of federal legislation, Bill C-45, is now changing that perception. However, this training is strictly optional. There is no requirement in law for a property standards officer to be certified or in any way properly trained.

There is also currently no training mandated for municipal law enforcement officers or peace officers which would combine both the academic knowledge, judgment training and physical skills necessary for an officer to perform their duties effectively and safely. Should a municipal officer with security duties become exempted because of their peace officer status, they would have no requirements or mandates to be trained to similar levels of those proposed under this bill. The same applies to security guards who are acting as municipal enforcement officers. This potentially can lead to another Shand case, exposing both the provincial government and the local municipality to civil liability, not to mention the obvious unnecessary risks to public safety.

In the future, should the province wish to mandate municipal enforcement staff to a higher level of equipment, uniform and training, then the board of directors of the Ontario Association of Property Standards Officers would appreciate the opportunity to participate in those discussions and in the establishment of the necessary standards.

In closing, I want to thank you for your time and consideration.

The Chair: Thank you, Mr. Creamer. We have a reasonable time left for questions from all parties, and I

would now begin with Mr. Ted Arnott, who is the MPP from Waterloo–Wellington.

Mr. Ted Arnott (Waterloo–Wellington): Thank you, Mr. Creamer, for your presentation. You talk about the training issues. I was wondering if you could give us some examples, because of the fact that training in some cases hasn't been as adequate as it should be, where municipalities have run into problems.

Mr. Creamer: Municipalities do not offer situational confrontational training as a norm. We talk to new recruits about the right of their power of entry, and also under Bill 132 now with the dog owner's liability, the right to seize an animal. You're talking about situations where you are putting the officer face to face in a confrontational situation and yet there is nothing there that they can fall back on by way of training to tell them how to deal with it effectively, ways to extricate themselves from the situation without putting both themselves and the person they're dealing with at risk.

The Chair: Any further questions, Mr. Arnott?

Mr. Arnott: No, thank you.

The Chair: We'll now proceed to Mr. Kormos, who's the MPP for Niagara Centre.

Mr. Peter Kormos (Niagara Centre): Thank you kindly. You raise a very interesting point on the reference to peace officers as among the excluded list. This is perhaps for Mr. Fenson. I stand to be corrected, but my understanding is that when a peace officer is referred to in the Criminal Code, it isn't a definitive source of what constitutes a peace officer in any given circumstances other than for the application of the Criminal Code. So if we could have some help in terms of understanding: Does "peace officer" have a definitive basis apart from either normal usage or the Criminal Code, because there is no definition in the statute of what constitutes a peace officer? So you raise a very interesting point.

One of the tensions that arose in Toronto and, I suspect, may arise again is between our public police, and you're in the public sector as well, and the private policing services—the parapolice, as I've been inclined to call them—that some security firms provide. We're going to hear later today—if not in an oral submission, in a written one; we've already received one—about how some security firms want the authority to have weapons, including firearms. My understanding is, when a municipal officer, like one of yours, is in a precarious position, he or she should be able to call upon the local police to assist them in enforcing their duties. That's my inclination, that's my bent, rather than, even with municipal officers, arming them etc. What do you say to that, appreciating the constant difficulty we have around the perpetual lack of resources in public police services?

Mr. Creamer: That is one of the initial problems. Having the police with you at all times when you are performing your duties is not something that's available to you. In my time as a police officer and in my time with this department, I've always taught my new people that you're going to know you are in trouble after the trouble starts.

1030

To arm them insofar as perhaps batons or pepper spray is a slippery slope. There are situations where that might be advisable, particularly in animal services where they're dealing with what they refer to as bite sticks, which are similar to a baton. A bite stick is a device that's used when the dog is attacking to give it something to chew on, other than your arm or your leg. A lot of times, these come in the form of a collapsible baton quite similar to the ASP that the police carry.

The Chair: I would now ask Mrs. Sandals, who is the MPP for Guelph–Wellington.

Mrs. Liz Sandals (Guelph–Wellington): First of all, let me comment that, clearly, it is not the intent of the bill to draw in cohorts of people who do different sorts of work, because what you're describing is not primarily either private investigator work or security work.

You are presuming that a solution is needed, and I think we need to go back and look at whether that's the case, but your solution is to include a whole host of people within the definition of "peace officer." If I'm understanding you correctly, the people you want exempted are already given authority to do their job under some other bill—for example, the Municipal Act or the Building Code Act. Is that right?

Mr. Creamer: That's correct.

Mrs. Sandals: So you're deriving your authority from some other act already.

Mr. Creamer: Correct.

Mrs. Sandals: So, rather than making a whole bunch of people who are bylaw enforcement officers into peace officers—which seems to me to be almost confusing things—why wouldn't you simply say, "If you're already authorized to do your job under the Municipal Act or the Building Code Act, carry on"?

Mr. Creamer: Because, to my mind, the definitions that are set out in Bill 159 leave a gaping hole that you can drive a truck through, as far as the appeal courts are concerned. By not listing them specifically, the sad experience has been that the appeal courts will often find loopholes, will find little ways through to come up with very strange interpretations that were never intended in the first place. That way, by putting them and listing them, you're not defining them as a peace officer for any other purposes other than to say that they are exempted from the requirements of Bill 159. I would hate to see a charge laid by a property standards officer thrown out of court because they were not acting as a peace officer because, in fact, they should have been a security guard, and opening the municipality to a lawsuit.

The Chair: Thank you, Mr. Creamer, for your testimony, your written submission and your presence.

CANADIAN ASSOCIATION OF CHIEFS OF POLICE

The Chair: I would now invite our next presenter to please come forward: Mr. John Kopinak of the Canadian Association of Chiefs of Police.

Mr. Kopinak, as you've heard, you have 15 minutes in which to make your presentation. Remaining time will be distributed evenly among the parties afterward. Welcome, and please begin.

Mr. John Kopinak: Thank you, Mr. Chair. Good morning to the committee. My name is John Kopinak, member of the private sector liaison committee of the Canadian Association of Chiefs of Police, retired chief of police from the Chatham-Kent Police Service.

The comments I provide this morning have been provided in the brief for the members, and I'll be following those comments, as provided in the text.

First of all, Mr. Chair and members, on behalf of the private sector liaison committee, a subcommittee of the Canadian Association of Chiefs of Police, I would like to extend our appreciation for the opportunity to present at this hearing this morning and provide brief comments on Bill 159, the Private Security and Investigative Services Act, 2004.

At the onset, I can assure you that this proposed legislation is well supported in a broad sense by our subcommittee of the CACP, whose members represent law enforcement services and corporate security functions across Canada. Additionally, I'm given to understand that our peers in the Ontario Association of Chiefs of Police and other stakeholder groups specific to the province of Ontario also concur.

In moving forward toward establishing regulations which will form the framework for this legislation, I would like to provide comment relative to the following items:

Under the definition of "security practitioner": A substantial number of our corporate affiliate members within the CACP are mandated by either federal standards or general practice guidelines to maintain critical infrastructure security protection or investigative services. In this regard, individuals with former law enforcement training and expertise are hired as employees of a corporation and are assigned the tasks necessary to comply with due-diligence applications.

In many cases, these investigators or security practitioners operate from a corporate head office situated outside our province and are deployed on an incident-based program as needed, since affiliate corporate entities are located here. In other situations, corporations that are situated within our province have specifically, since 9/11, enhanced security monitoring of certain functions within their operations by assigning business unit managers with specific security protocols in order to establish a layered networking plan, which is co-ordinated by the resident corporate security chief designate.

Historically, all these investigative positions at the corporate level in both scenarios are plainclothes and non-uniform placements. Business unit managers following security protocols for their business unit are plainclothes positions, and besides their usual duties and responsibilities, they have the added responsibility to manage security protocols as the first point of contact and primarily deal with security breaches or internal issues.

Mandatory certification and licensing for both these types of security designates will have financial implications for corporations as well as deployment restrictions and deployment challenges. Such mandatory certification and licensing also contradicts federally mandated security provisions for many of our stakeholders, since there is no obligation nor reference to deploy licensed practitioners to fulfill federal protocol standards. I add that these individuals, as described, would not interact with the public for the most part, since their focus is primarily with employees of the corporation. Any outside public interaction will normally involve local law enforcement. Our recommendation, therefore, is to develop a regulation that accommodates individuals assigned to security roles as illustrated without the onus of compliance for licensing.

In mandatory training, again, corporations recruit and hire, as a general practice, experienced candidates for their corporate security role who possess previous law enforcement expertise from either the municipal, provincial or federal level. The roles of these individuals are primarily investigative plainclothes positions within the corporate entity dealing with internal breaches.

Given the past experience and training of these individuals by their former law enforcement agency, an accreditation component needs to be considered within the regulation. Such provisions will allow for issuing credits toward overall certification criteria if the training standard has been previously met by this individual through his or her employment history. This will provide those individuals who have previously qualified under stringent guidelines in their law enforcement career an opportunity to be exempt from a basic, repetitive process primarily geared for recruit-type private security uniform positions. Our recommendation, therefore, is to identify the option of accreditation through the regulation in the area of training for candidates who have past experience in the law enforcement profession that meets the benchmarks of any proposed training standards.

In regards to the heading of external regulatory dialogue, I believe this committee is aware that the provinces of Manitoba, Alberta, British Columbia, Nova Scotia and Quebec are presently involved, as is Ontario, in regulatory reform initiatives dealing with private security legislation. The Law Commission of Canada sponsored an international conference in 2003 in Montreal at which provincial security regulators from across Canada met together as a group. Our committee understands the dialogue between these regulators has been maintained to some degree. Our recommendation in this regard is to ask that provisions be put in place to ensure and encourage continued interaction and discussion among the provincial security regulators across Canada in order to maintain continuity in potential regulatory reform, where possible.

In summary, as our committee goes forward, be advised the private sector liaison committee of the Canadian Association of Chiefs of Police will continue with dialogue and research on all legislative information

disclosed by provinces involved in regulatory revision of private security legislation. The private sector liaison committee will develop a formal written resolution to be filed with the CACP membership as a whole at next year's conference for discussion and endorsement.

Some components of Bill 159, specifically the proposed code of conduct and the public complaints process, are areas which will be reviewed, especially in how they relate and apply to corporately employed investigative staff dealing with in-house issues.

1040

We also ask for consideration, through this committee, to participate as a member of the minister's advisory committee, as a resource for future deliberations and discussions.

I thank you again, Mr. Chairman and committee members, for the opportunity to appear before you today. I'm prepared to answer any questions, should there be any.

The Chair: Thank you, Mr. Kopinak. We'll begin with Mr. Kormos.

Mr. Kormos: Thank you very much. Your recommendation on page 3 is one that has been spoken of earlier in these hearings and is one that I'm really hoping this committee heeds.

You're a long-time police officer, a chief of police. I have to agree with your proposal that the Canadian association be involved in the regulatory advisory process, because of the interprovincial element. Again, I hope it's something that the government members take back to the minister.

One of the tensions in these hearings that has been consistent is between the private security companies that operate the more proactive, aggressive—the parapolicing, I call them—private policing and the Police Association of Ontario, the Ontario Association of Chiefs of Police and the Ontario Provincial Police Association. You've been a police officer at all levels. I am very concerned when I hear about private security guards doing drug busts, for instance, at the Eaton Centre. What do you say to that?

Mr. Kopinak: I think there has to be a relationship established. The opportunity with the current state we're in, in looking at this piece of reform, is to make sure that the private security legislation complements the public security, and clearly recognize that there are standards and responsibilities within the framework of their duties that have to remain in the realm of the public police officers, professional police officers. I think that's a very important point. If not, I think that we can open ourselves for other concerns.

Mr. Kormos: Further, what about private security guards and their possession of either weapons or tools, I'll call them, like handcuffs? Where would you draw the line there? Would you have varying degrees of weaponry possessed by a private security officer or would you say that, no, it's for trained police officers?

Mr. Kopinak: We have some issues now, especially in the armoured business of handling finances and cash, certain situations, where members comply. I think it's a training component. I would refer the committee: There is a continuum on the use of force, a very accepted Ontario model that is taught through the Ontario Police College, called the use-of-force continuum, in which there are certain levels of force and certain items—a baton etc.—that can be associated with that use of force.

Mr. Kormos: Perhaps Mr. Fenson can get that for us.

The Chair: Sure. Thank you, Mr. Kormos. We'll move to the government side and Mr. Delaney.

Mr. Bob Delaney (Mississauga West): Thank you for coming in and for a very interesting and thoughtful deputation. I'd like to ask you two questions based on your remarks. You state that mandatory certification and licensing will have financial implications for corporations, as well as creating deployment restrictions. You also state that the focus of the individuals is primarily with employees of the corporation.

Corporations routinely employ such professions as accountants and lawyers, and even trades such as plumbers and electricians, whose regulation is provincial, even though the corporation's scope is national. On the second point, employees remain entitled to their basic freedoms and rights, even though they may choose employment with a corporation. So I'd like to ask you, could you please elaborate on what appear to be inconsistencies in your remarks?

Mr. Kopinak: The issue that surfaces here is the fact that, since 9/11, to establish this layered networking of security, many business unit managers, especially in the energy, power and airline industries, have been added as a component of a security protocol for the purposes of being the first report to the corporate security chief. The network becomes that much more expansive for enhancing security provisions.

Technically, by the security practitioner definition that's currently in the legislation, that individual operating in that role would have to be trained, would have to be certified and would have to be licensed. That's where the financial implications come in for a company that may have 40 to 50 of these individuals in that role, or that function would have to be supplemented by a licensed, formally approved security company operation. That's one of the issues.

The second application is, many of our members have offices, especially in the airline industry and the energy industry, and travel here to Ontario for incident-based investigations, but the individuals are based out of the province of Ontario. They would be here for investigative reasons. When they enter the province, this definition would ensure that they must then get licensed and comply to operate in their role as an investigator, notwithstanding that they are transient to this province and housed in a different location.

Mr. Delaney: Who should, ideally, deliver training?

Mr. Kopinak: We have a lot of—not only government from the police college experience that I've had and where they've progressed, but we have a lot of individuals who have been involved with law enforcement.

There are private sectors out there that can offer it. The community college level is one option. The standards are the main thing. As long as we have a menu and a checks-and-balances system to ensure that it's consistent and it's to that level of expertise, the provider of that training, I think, could be diversified across the province through several sources.

The Chair: Now Mr. Arnott.

Mr. Arnott: You're in a position to comment on the regulatory component of security guards across the country. You've mentioned that the provinces of Manitoba, Alberta, British Columbia, Nova Scotia and Quebec are presently involved as well in this objective. Quite frankly, looking at the provinces you've listed, we have governments spanning from what Mr. Kormos would consider to be right-wing governments right through to Manitoba. Are they all going essentially in the same direction?

Mr. Kopinak: Absolutely. That's one of the refreshing points, and that's why in my statement we specifically reference it. Our regulators are talking. Please, let's encourage them to maintain that so we can have some continuity and best practices from one end of this country to the next. Let' s all get on the same application.

The Chair: Thank you, Mr. Arnott, and thank you as well to you, Mr. Kopinak, for your deputation for the Canadian Association of Chiefs of Police.

SHERRY CHARETTE

The Chair: I would now invite our next presenter, Ms. Sherry Charette, who comes to us in her capacity as a private individual.

Ms. Charette, I remind you as well, you have 15 minutes in which to make your presentation. As you'll see ably demonstrated, the remaining time is then distributed among the parties afterwards. Please begin.

Ms. Sherry Charette: I want to thank everybody for allowing me to be here. I'm not going to take up too much time and I'm not going to refer to the document. You can always look at that afterwards.

As a security officer, I wanted to talk about the misconception about the security industry and security guards. If you've seen the movie Field of Dreams, you'll understand my reference to, "If you build it, they will come," but unfortunately not in this case. You can make all the changes to the act, but implementing the changes will be the difficult part. In some places, I find, the recommendations are very vague.

There are too many unanswered questions surrounding training, who will pay for it, how it will affect those already in the industry, not to mention the misconception that if you regulate only training and there is an influx of highly trained guards, that in itself will increase the wages. I can guarantee that that will not happen. Look at the example of British Columbia. I have a degree in law and security which has provided me no greater benefit. I've been with the same company for 11 years. Along with the regulation of wages—I'm looking at the Quebec decree—in order to provide a stable industry of trained individuals there must be job security through successor rights.

I work for a company who uniforms us so that we don't look like police; neither do our patrol cars. So I'm in agreement with implementing the changes for that act. There are many companies out there who try to fool the public into believing that they're police officers through their uniforms or patrol vehicles.

1050

The word "officer," referring to a security officer, I don't believe has ever been misconstrued by anybody to imply that we're anything but security guards. I find it simply more a respectable term being a security officer than a security guard.

I am thoroughly opposed to a code of conduct. We should not be held to the same high standards as police, because we're not. The same reason for the changes to the uniforms and the cars: We are not doing police work and therefore we should have different standards. We work in an industry that is afforded little respect. We are seen as the company snitch or as little more than an insurance deduction.

The Shand inquiry highlighted the deficiencies in the security industry, but just changing the act won't fix these deficiencies. We need to answer the questions about training. We need to stop the race to the bottom, where contracts are won or lost over a few cents. I wish we were talking dollars, but we're not. I've seen contracts lost on a penny per hour.

Clients and the public want highly trained individuals for rock-bottom prices. That's it. In reference to the two gentlemen who spoke prior to this, I do not want handcuffs; I don't want pepper spray. My job through my company is to detect, deter by my presence and report. I am not a police officer. If I wanted to be a police officer, I'd go and join the police force. I'm a security guard. I protect the site that I'm assigned to.

The Chair: Thank you, Ms. Charette. You've left a generous amount of time for questions. We'll start with the government side. Ms. Sandals.

Mrs. Sandals: I was interested in your comments about not wanting a code of conduct. The code of conduct would presumably be appropriate to the expectations of a security guard or a private investigator, as the case may be, not the code of conduct that would be appropriate to a police officer. I'm wondering why you're opposed to a code of conduct.

Ms. Charette: I think that that section in the act leaves too many questions for me. If you're talking about being in the wrong place at the wrong time because, through association, you go out to a bar afterwards and, I don't know, you happen to get arrested, I suppose those are questions that I have concerns about. Losing my licence because I'm in the wrong place at the wrong time: Certainly if I was out there doing something illegal, then I should lose my licence, absolutely. But there are too many questions, and that area is very vague for me. So that's why I'm opposed to it.

Mrs. Sandals: So are you suggesting that there shouldn't be a criminal reference check? That's apart from the code of conduct.

Ms. Charette: We already have that. As a security officer, I have to have an OPP renewal licence every year that checks my background. Absolutely; I'm not opposed to that. I do it now. Like I said, there are so many unanswered questions. I understand, somewhat. The code of conduct that the police are held to is very strict, limiting their actions after their working hours. They seem to be always on the clock for code of conduct, and that is a concern that I have as a security officer.

Mrs. Sandals: So what you're saying is you don't want a code of conduct that applies 24/7; only when you're being paid?

Ms. Charette: Absolutely.

The Chair: Are there any further questions from the government side? Seeing none, Mr. Arnott.

Mr. Arnott: Just to follow up on Mrs. Sandals's question, I would think that a code of conduct, assuming that security guards had some input into it, would be something that could enhance your professional status and hopefully it could be something that would be embraced by most security guards in a positive way.

Ms. Charette: I've never had a problem with my conduct on my job, while I'm working, or afterwards.

Mr. Arnott: I'm not suggesting you have.

Ms. Charette: No, no. I didn't mean that at all. I guess I look at the code of conduct that police are held to, the standards that they're held to, and that is a concern. Like I said, if I'm in a bar where the police come in and arrest me because I'm there at the wrong place at the wrong time, it would prevent me from getting a licence, and this is my job. I plan on doing this until I retire or I can't work any more. I guess if that's under the code of conduct and I lose my licence because of that, I have a big concern for that.

Mr. Arnott: So you'd be most concerned about prohibitions on after-hours kinds of activities.

Ms. Charette: Absolutely. We should all be accountable for our actions during working hours, certainly, but afterwards, I don't find that.

The Chair: The Chair yields the remaining nine minutes to you, Mr. Kormos.

Mr. Kormos: Thank you, Chair. Ms. Charette, I think your code of conduct comments should be listened to very carefully. We may hear yet again from police officers, because police offers have been subjected to a code of conduct that impacts their private lives as well as their role as police officers. Over the course of years, there have been some changes in how that is approached, with the recognition that cops are people too. For instance, they have problems at home, any number of things. Far too often in the past—and correct me if I'm wrong—police officers have been persecuted for something that was purely personal—conflict within their home—and an aggrieved party might use that as a means of attacking that police officer's capacity to perform his or her job.

I think what you're cautioning us to do is be very careful. To me, André Boisclair, the fellow aspiring to be the leader of the Parti québécois in Quebec, who was doing lines of coke off his cabinet desk, doesn't have as high a code of conduct. Surely, at $9.57 an hour, we can't expect security guards to have an overly rigorous code of conduct that doesn't impact their ability to perform their job with integrity. Is that what you're saying?

Ms. Charette: Absolutely.

Mr. Kormos: All right. Let's talk about these wages. I want to talk about wages, and I want to talk about the identification. I think that's an important issue too, and it's the first time it has been raised, because there is the need to identify yourself as a security guard when asked. Let's talk about that first. Would you be prepared to give an identification number?

Ms. Charette: Yes. There's actually a number on our licence.

Mr. Kormos: Would you want it to be universal that no security guard could have a personal identifier, like a surname, on the licence they produce for identification, or only those who request the exclusion?

Ms. Charette: I never really gave that too much thought, other than the one part I saw in the act about being able to get a person's name or number and call in and find out their status. I have concerns about that. In 11 years, nobody has asked to see my licence, so I don't know that it's really a big issue that somebody has a surname. There should be a number—absolutely. There are pictures on a security guard's licence right now. I'm not exactly sure what you're asking me.

Mr. Kormos: What I'm trying to make clear is that you just want to protect yourself against some wacko who is going to track you down through the phone book or a city directory.

Ms. Charette: Exactly.

Mr. Kormos: I think that's a very valid reason.

Ms. Charette: Anybody can come up and ask me for my licence, but nobody other than my company really knows my status. There is not a phone number somebody can call right now and say, "I have this name. Is this person a security guard?" Using that, they can get more information.

Mr. Kormos: You're only the second front-line, sort of bona fide security guard we've heard from. I remember Mr. Caron in Toronto: a very interesting insight, and yours too.

This $9.57 an hour—do you pay annually for your licence?

Ms. Charette: Actually, no. I'm unionized, so I'm lucky. I pay only $15 and get reimbursed through my company. They pay the difference.

Mr. Kormos: Was that as a result of negotiations?

Ms. Charette: Absolutely.

Mr. Kormos: What about your uniform?

Ms. Charette: The company pays for that as well.

Mr. Kormos: As a result of negotiations?

Ms. Charette: Absolutely.

Mr. Kormos: God bless the Steelworkers.

Ms. Charette: There are some companies out there—I know of one in particular—that when you get hired, you have to pay out. Your first paycheque is deducted $200—that's your licence and uniform—just to get a job making maybe $8 an hour.

Mr. Kormos: Do you know what your employer company bills for your work, or are you dealing directly with your employer?

Ms. Charette: I don't know the direct bill rate, but I think it might be around $2 higher than they're paying us. It's very minimal.

Mr. Kormos: Are we going to attract people like you—quality, committed people—who say, "I want this as a career," with new and higher standards but with pay rates at $9.57 an hour?

Ms. Charette: Absolutely not. The only reason I got involved in the security industry was through the training, the law and security degree. The course was over $2,000; I think it was close to $5,000. I was lucky to be able to get that course. I wanted to get into corrections. At the time, no jobs were being offered to me, so I decided to step into the security industry.

At the wages I'm making now, I'm above minimum wage, but granted, if I lose my site tomorrow, I'm potentially going to a site that could be $7.70 or $8 an hour. You can't survive on that. With the training I have, I stay only because of my involvement with the union. That's the only thing that has kept me here; it's not the wages.

1100

Mr. Kormos: One of the things that we in Canada should be proud of is that police officers are reasonably well paid. One of the reasons we have that tradition of well-paid police officers is because it avoids some of the notorious problems in other parts of the world, where police officers are grossly underpaid and simply can't support themselves on their salaries. That means they begin to risk compromising their integrity. If we're going to ask security guards to adhere to yet a higher standard of integrity, yet we only pay them $9.70 an hour, it's pretty unrealistic to call upon people to, for instance, protect very valuable property, like a warehouse full of iPods or designer jeans or something; it really is. They're not dealing with boosters; they're dealing with organized crime. These are the people who rip off warehouses, for instance, and they'll go to any length to compromise a security guard. I'm not suggesting that security guards are compromised easily, but if you're only paid $9.70 an hour, one begins to understand. I think we in this committee had better reflect on whether we value the work you do, that you keep not just property safe but you keep me safe in my workplace, and pay you accordingly.

The Chair: Thank you, Mr. Kormos, and thank you, Ms. Charette, for your deputation.

MUNICIPAL LAW ENFORCEMENT OFFICERS' ASSOCIATION

The Chair: I would now invite our next presenter, Ms. Brenda Russell, president of the Municipal Law Enforcement Officers' Association. I remind you, Ms. Russell, that you have 15 minutes in which to make your presentation, with the remaining time to be divided evenly amongst the parties. Please begin.

Ms. Brenda Russell: Mr. Chairman, members of the committee and ladies and gentlemen, thank you very much for the opportunity to speak before you today. My name is Brenda Russell. I am the president of the Municipal Law Enforcement Officers' Association of Ontario. The Municipal Law Enforcement Officers' Association was incorporated in 1985 and currently represents over 1,200 municipal law enforcement officers throughout the province of Ontario. I personally have been involved in municipal law enforcement with the city of Barrie for more than 23 years.

Bill 159, An Act to revise the Private Investigators and Security Guards Act, has been proposed primarily with the intention of more strictly regulating the industry of private investigators and security guards, as commonly known, throughout the province. However, the proposed bill appears to potentially and inadvertently capture certain municipal employees and other individuals engaged in the enforcement of certain municipal bylaws, provincial statutes and regulations. It is for this reason that I make representation before you today.

Generally speaking, municipal law enforcement officers are appointed by municipal councils under the authority of subsection 15(1) of the Police Services Act, which states, "A municipal council may appoint persons to enforce the bylaws of the municipality." By virtue of an appointment under subsection 15(1), subsection 15(2) of the Police Services Act deems that such "municipal law enforcement officers are peace officers for the purpose of enforcing bylaws." Clause 2(7)(c) of Bill 159 would therefore exempt such individuals from the provisions of Bill 159.

The Dog Owners' Liability Act clearly establishes in section 12, "For the purposes of this act, the following persons are peace officers:

"1. A police officer, including a police officer within the meaning of the Police Services Act, a special constable, a First Nations constable, and an auxiliary member of a police force;

"2. A municipal law enforcement officer;

"3. An inspector or agent under the Ontario Society for the Prevention of Cruelty to Animals; and,

"4. A public officer designated as a peace officer for the purposes of this act."

These individuals will also be exempt from the provisions of Bill 159.

The designation of individuals appointed or authorized as peace officers under these acts is clear and distinct. However, there are a number of individuals employed by municipalities and agencies who are appointed, designated or otherwise authorized under a variety of other legislative authorities. Their duties include the monitoring, patrolling, inspecting or investigating of property not owned by the municipality or agency for the purpose of

enforcing the provisions of those bylaws, statutes, regulations or other relevant legislation.

The Building Code Act, subsection 3(2), states, "The council of each municipality shall appoint a chief building official and such inspectors as are necessary for the enforcement of this act in the areas in which the municipality has jurisdiction." The Building Code Act, however, does not designate such appointed individuals as peace officers for the purpose of enforcing the provisions of the Building Code Act.

The Line Fences Act, section 2, provides that every council of a local municipality "shall by bylaw appoint such number of fence-viewers as are required to carry out the provisions of this act...." The act does not designate such individuals as peace officers for the purpose of carrying out the provisions of this act.

The Fire Protection and Prevention Act, subsection 11(1), states:

"The following persons are assistants to the fire marshal and shall follow the fire marshal's directives in carrying out this act:

"(a) the fire chief of every fire department;

"(b) the clerk of every municipality that does not have a fire department;

"(c) any member of a fire prevention bureau established by a municipality; and

"(d) every person designated by the fire marshal as an assistant to the fire marshal."

Part V, subsection 13(1) of the act provides that:

"A firefighter or such other person as may be authorized by the fire chief, the fire marshal or an assistant to the fire marshal may, without a warrant, enter on lands or premises....

"(b) that are adjacent to the lands or premises on which there is a serious threat to the health and safety of any person or the quality of the natural environment, for the purpose of removing or reducing the threat."

The Fire Protection and Prevention Act does not designate assistants to the fire marshal as peace officers for the purpose of the enforcement of the fire code and carrying out of duties under the Fire Protection and Prevention Act.

The Livestock, Poultry and Honey Bee Protection Act, subsection 4(1), provides that "The council of every local municipality shall appoint one or more persons as valuers of livestock and poultry for the purposes of this act." It requires that such valuers immediately make full investigation of any claim that an owner's livestock or poultry has been killed or injured by a wolf or by a dog other than the owner's dog. The valuer is required to make a report within 10 days thereafter to the clerk of the municipality, giving in detail the extent and amount of the damage and his or her award thereof, and shall at the same time forward a copy of the report to the owner of the livestock or poultry. The Livestock, Poultry and Honey Bee Protection Act does not identify the valuer as a peace officer for the purpose of carrying out this act.

It is important that the legislation be distinctly clear. It is therefore the respectful submission of the Municipal Law Enforcement Officers' Association of Ontario that Bill 159, subsection 2(7), be amended to include an additional exemption for peace officers, that specific exemption perhaps to read: "any person appointed or designated for the purpose of enforcing the bylaws of a municipality, provincial statute or regulation." This would be in addition to the current exemption for a peace officer. The inclusion of this phrase within the non-application section will clearly exclude such municipal employees and other individuals, including building inspectors, zoning inspectors, property standards officers, fence-viewers, assistants to the fire marshal, and livestock valuers, who are enforcing bylaws, provincial statutes and regulations from the provisions of Bill 159.

In closing, I would like to comment that the Municipal Law Enforcement Officers' Association is committed to maintaining a high standard of professionalism, training and accountability within our industry, and we respectfully offer our assistance with respect to future legislative reviews and development. Thank you.

The Chair: Thank you, Ms. Russell. We begin with Mr. Arnott.

Mr. Arnott: Thank you, Ms. Russell, for your presentation. I apologize; I had to make a telephone call there and I missed the first part. I was wondering, Mr. Chairman, if I could stand down my question in rotation so as to allow me to briefly go through this.

The Chair: Sure, if the committee is agreeable, which I assume it is. Mr. Kormos.

Mr. Kormos: Thank you, Chair, and thank you very much, ma'am. Mr. Creamer earlier this morning made some similar observations, and I think they're too important to simply assume, "Oh, well, that isn't what's intended."

Of even greater interest, though, is, for instance, your reference to the Dog Owners' Liability Act: "For the purposes of this act, the following persons are peace officers...." Again, some lawyer somewhere—those damned lawyers—may well find himself or herself arguing that that very clearly means for the purpose of the Dog Owners' Liability Act.

Clearly, I think everybody here on this committee agrees that the class of persons that you describe in the final part, a "person appointed or designated for the purpose of enforcing..." etc, are people who should be exempted from the statute. It can either be done by saying, "In this statute, 'peace officer' means any person appointed," or the exemption can be added to the list of exemptions—either way. I think that would add clarification, avoid confusion and recognize the capacity of those statutorily sourced bodies and persons to be regulated and controlled from within that statutory source.

All I want to add is that someday, when I'm much older and there's no room for me at the Legislature any more, if I can get a job as a fence-viewer—anywhere, northern or southern Ontario—I think I could do that. I don't whether my colleagues would agree, but I think I'd make a good fence-viewer in 10 or 15 years' time. I don't know; will you vouch for me?

1110

Interjection.

Mr. Kormos: Arnott wants to see it happen sooner.

Interjection.

Mr. Kormos: That's right: Every fence in Ontario would have a bent to the left. Very good.

Thank you very much. Those are very important points to be made in addition to your colleague Mr. Creamer's earlier.

The Chair: Thank you, Mr. Kormos, and with that professional aspiration I'll turn it to the government side. Ms. Sandals?

Mrs. Sandals: You've actually raised a similar issue to Mr. Creamer, but you've taken the opposite sort of solution, that instead of making everybody a peace officer, you're exempting everybody who is enforcing a municipal bylaw. Do you want to comment on why you've made that particular recommendation?

Ms. Russell: The proposed legislation, Bill 159, uses the exemption of a peace officer within the legislation, and I think the fact that there are other legislative authorities that deem individuals—bylaw enforcement officers, individuals enforcing the Dog Owners' Liability Act—as peace officers draws them naturally into that exemption. The fact that other individuals enforcing bylaws or provincial statutes or regulations, as the case may be, are not specifically identified as peace officers within the respective legislation therefore captures them outside of an exemption. I think that—and as I heard stated in some of the previous comments—if it is the desire of the government, there is potentially room to deal with training or regulatory provisions for those individuals involved in enforcement, peace officers who are not police officers. I think that's a very distinct and separate element that we would want to contemplate as opposed to inadvertently capturing it within legislation that I believe was not necessarily intended to capture those individuals who, just by virtue of legislation, haven't been identified as peace officers.

Mrs. Sandals: If I can just ask one quick follow-up question, when I look at the amendment you have proposed—and thank you for proposing a specific amendment, because that's quite useful to contemplate—I'm assuming that when you're talking about "any person appointed or designated for the purpose of enforcing the bylaws," you're contemplating that that person would be designated or appointed under the authority of some other provincial act.

Ms. Russell: That is correct.

Mrs. Sandals: So it isn't that the municipality could start pulling people out of the air; it would be that some other provincial statute would already need to be outlining the authority.

Ms. Russell: That is correct. It would need to be authorized by that specific legislative authority.

The Chair: Mr. Arnott?

Mr. Arnott: Ms. Russell, in your presentation you indicated that you believe that the municipal employees were inadvertently captured by the application of Bill 159. What led you to draw that conclusion? Perhaps the government was doing it deliberately.

Ms. Russell: And they may have. It is my conclusion. In consultation with our board of directors, it was a general belief that it was an inadvertent capturing. The reason that I believe it was inadvertent is because of the exemption for peace officers. I think that there is a recognition that separate and apart from police officers, which would not be captured within the legislation, as an example, there is another component of enforcement that exists within the province, that being by peace officers, and that very exemption leads us to believe that it was inadvertent that those individuals who may not necessarily be specifically identified as peace officers were being otherwise captured.

Mr. Arnott: In conversations you may have had with ministry officials, have you drawn a conclusion that the government is prepared to move forward with the amendment that you're asking for?

Ms. Russell: I'm not aware of that, no.

The Chair: Thank you, Ms. Russell, for your deputation from the Municipal Law Enforcement Officers' Association.

INTERCON SECURITY

The Chair: I would now invite our next presenter, Mr. Mike Fenton, the director of consulting and client support for Intercon Security Ltd. I'm reminding you, Mr. Fenton, that you have 15 minutes distributed afterwards, as you have seen. Please begin.

Mr. Mike Fenton: Good morning, Mr. Chairman. Good morning, committee members. Thank you for allowing me to present this morning.

Our industry, in our view, definitely does require upgrading and we welcome the potential for improvement that Bill 159 brings. However, we are concerned that Bill 159 in and of itself does not specifically address many of the areas that require improvement. Many areas of vital interest to our industry such as training and uniforms will be addressed by the regulations. We would prefer that all significant issues actually be addressed by the legislation. We believe that this would provide a more solid planning base for our industry.

Licensing of all security guards is a positive step, which likely will create economic opportunities for us. Our concerns are:

Locksmiths, security consultants and providers of electronic security systems still do not require a provincial licence. The new licensing requirements should cover all security providers, especially those who have access to sensitive information and knowledge of how to compromise locks and alarm systems. Many locksmith and alarm company employees are frequently in residences, art galleries and other places where property of high value is kept. More importantly, they are frequently in circumstances where they are left alone with clients and they often work in close proximity to children. If the committee has not already done so, it should review the findings of the Klees commission in this regard.

One of the testimonies that was heard at the Klees commission was from a woman who had a locksmith in her home and it was 4 o'clock on a Friday afternoon. She was going to her cottage. She wanted to have some lock work finished before the locksmith had to leave. She offered him additional money and additional money, and eventually the locksmith said, "I have to leave because I have to get back to the penitentiary by 5:30."

We are also concerned that the legislation makes no mention of infrastructure to support the new licensing program. We need an industry infrastructure that will result in a fast licence turnaround. Currently we wait on average five to 10 working days for the issuance of a current licence. We would like to see this reduced to two to three days for the new licence. Funds for the new licence should support the infrastructure needed to facilitate this.

We concur with the training requirements and the use of the CAN/CGSB-133.1-99 training standard for security guards and supervisors. That's a total of 80 hours of training. We agree with that. Similar training requirements and an appropriate standard are also required for private investigators. The American Society for Industrial Security has a certified professional investigator program. We think that would be applicable for private investigators here in the province.

Security industry clients and employees both need specific skills and development recognition. For this reason, we recommend that the Ministry of Training, Colleges and Universities administer the training requirements. There should be a relationship between the Ministry of Training, Colleges and Universities and the private investigators and security guards branch which would ensure that security guards and private investigators have received the appropriate basic training from qualified providers before receiving their licences.

In addition to the Canadian General Standards Board training, we recommend the development, approval and implementation of industry-wide training standards for the following: A non-violent crisis intervention and tactical communication course should be mandatory for all security guards working in public access environments such as shopping centres within the first 90 days of their employment; use-of-force/basic self-defence training—the use-of-force continuum model would be acceptable to us; handcuffs and restraints, which are in wide use throughout our industry already; batons and firearms.

We are also prepared to assist in the development of the above-noted training standards and where existing programs are in place, the standards development committee should attempt to utilize them.

Uniforms: Before I get into uniforms, I understand the concerns about police officers being confused with security guards and vice versa. I've been in the Canadian security industry for 31 years, 15 of them as the director of operations for Intercon in Toronto where at the moment we have about 1,400 security guards. I have personally only ever fired one security guard in all that time for impersonating a police officer. I don't think this is that big an issue. However, police and security uniforms should be clearly labelled, both front and back, to eliminate any potential for confusing the general public. We are not in favour of changing uniform colours. We currently use black uniforms for some guard categories. This is because dark uniforms improve a security guard's safety while conducting after-dark exterior and interior patrols. They also provide improved safety of our operatives while investigating intrusion alarm scenes after dark. We currently have about $700,000 tied up in uniforming and any colour change will be very expensive.

Vehicles: Marked police and security vehicles should both be clearly labelled to eliminate any potential for confusing the public. The regulations should prohibit security company vehicles from utilizing graphics and/or colour schemes that closely resemble the local police or provincial police. The regulations should specify "security" labelling on all sides of the vehicle, a minimum common font size and the use of light-reflective decal materials such as Scotchlite.

1120

Since the standard base colour for marked police vehicles is white, we recommend that the regulations specify dark-coloured vehicles only for use by security companies. The regulations should prohibit security companies from further deployment of all light-coloured vehicles. All existing light-coloured security vehicles should be allowed to remain in use, we think, for a reasonable time, such as three to four years.

Armoured car services: Armoured car services do not appear to be addressed by Bill 159 or the accompanying regulations. We recommend that they be subject to similar licensing and training standards as the rest of the security industry, and in the interest of consistency, they should be administered by the private investigators and security guards section of the policing services division.

Armed guard services: Presently, many aspects of armed guard training, weapons management, and assignment approval are not managed by the private investigators and security guards section, policing services division. This leads to armed guard providers in effect dealing with two different official bodies.

We believe that the utilization of only one official body would reduce our administrative burden and ensure that armed security guards meet all provincial licensing requirements and result in centralized management of all security guards and better administrative follow-up of public complaints against armed security guards.

We believe that it is in the public interest to bring the administration of armed security guards and unarmed guards together under the private investigators and security guards section, policing services division. We are prepared to assist in developing training standards, assignment criteria and coverage guidelines, such as the number of armed guards required at various types of assignments.

Also, Bill 159 should grant security companies the authority to use armed guards at certain types of assignments that meet specific criteria. A situation exists at

present whereby expensive paid-duty police are used to provide security coverage that could be provided by less expensive armed security guards. This would provide financial savings to jewellers and other businesses with requirements for armed security. It would also create employment opportunities for armed guards.

That's the end of my presentation.

The Chair: Thank you very much, Mr. Fenton. We'll start with the government side.

Mrs. Sandals: It was interesting that you mentioned in sort of your standard issue things that training should include firearms. Are you suggesting that large numbers of security guards or private investigators would be carrying firearms?

Mr. Fenton: What we're suggesting is that, at the moment, a small number of security guards do use firearms. We think that if you're going to look at the whole act, the whole industry at one time, it should be centralized and there should be a universal standard applied across the industry. That's our point.

Mrs. Sandals: So you're suggesting everyone who's a security guard should be trained to use firearms?

Mr. Fenton: Absolutely not, no.

Mrs. Sandals: So you're simply saying that in the event that people are authorized to use firearms, where they are licensed to carry a firearm, then within a regulation there should be a training requirement if they're licensed to carry.

Mr. Fenton: That's right.

Mrs. Sandals: Similarly, with the baton, then, if they are in some sort of category that would authorize them to carry a baton, there should be a uniform standard for training for carrying a baton.

Mr. Fenton: That's correct. I would say that less than one half of 1% of security guards are currently licensed to use firearms. In our company, it would be that low. It would probably be under 20 out of 1,400. I think industry-wide, that would probably be the same.

As for batons, I would think that probably between 20% and 25% of security guards currently use batons in some capacity. Different properties have different regulations. Some properties allow them only at night, some properties allow them only when there's a report, say, of a pending gang fight or something like that. But yes, a lot of people in the security industry definitely do have training and do use batons.

Mr. Arnott: Thank you very much for making your presentation. You obviously have a great deal of professional expertise and experience to offer the committee. You talked about the turnaround for licensing, and you said it takes weeks instead of days. It should take days.

Mr. Fenton: It should be faster.

Mr. Arnott: Yes. What is the process that the ministry has to undertake in order to determine whether or not the licence will be issued? Is it just a matter of resources, as far as you're concerned, that the ministry's in?

Mr. Fenton: Well, we think it's resources. First of all, we're in favour of licensing, and we think, for example, that this step is going to require hospital in-house security teams to be licensed etc. Retail shopping centres that currently have in-house security forces are going to have to be licensed.

The current licensing, I think, is partly to do with resources, and I think that's probably the big issue. They did switch from a universal renewal date to company-specific renewal dates—that seems to have helped a bit—but we think that has to be turned around for two reasons. One, it will make our lives easier, and it will also benefit our clients. But when you have a security officer waiting to start in the field, they're not getting paid. So there's an economic penalty, in fact, to the people who are being licensed.

Mr. Arnott: You said that you employ 1,400?

Mr. Fenton: In the Toronto area, plus we employ about another 200 alarm installers and locksmiths.

Mr. Arnott: What is your annual turnover of staff, on average?

Mr. Fenton: It depends. We think that we're the industry leader in Toronto in terms of turnover. I would say that we probably turned the whole company over, maybe 50% of it, within the first two years, something like that.

Mr. Arnott: So licensing new employees is obviously paramount.

Mr. Fenton: It's pretty significant, yes.

The Chair: Mr. Kormos.

Mr. Kormos: I'm interested as well in the exclusion, and in fact whether or not they're excluded—I'm talking about not just providers of electronic security systems, but most specifically a company called AlarmForce, which has been aggressively advertising, where somebody sits in an office and monitors the unit and then interacts via telephone and speakers with whoever is in the house. I can't see the exemption for that type of monitoring in the bill. I'd like either the bureaucratic personnel from the ministry at some point or perhaps you, Mr. Fenton, to provide an explanation of whether or not the AlarmForce types of companies, where there's monitoring—because that seems to fall under the definition of security guard—to confirm that, yes, they are intended to be embraced by the act. But why does the act then ignore the highly sensitive areas of locksmithing and security systems when it might be suitable to bring them all under one umbrella? If you've got codes of conduct, if you've got regulation development, why not bring them all under the same scope?

What's your view? We've talked about, not so much specifically this morning, in-house security. IBC will be coming up next, and I'm sure they'll be addressing the whole phenomenon. You've worked as in-house security, developing in-house security systems, not down on the retail floor where the public has access, but up on the 24th floor. I'm assuming that everything from banks to computer companies have intricate levels of white-collar security—not security guards, but security that performs the functions contemplated by the definition. Do you think they should be included in the licensing process?

Mr. Fenton: Yes, I do, Mr. Kormos. The reason we think they should be licensed is that we think it's in the

best interests of the client. If you hire someone into a security capacity and they don't have a licence, that means they get that job and they basically don't have to have a criminal-record check. These people are going to be exposed to things like keys, money etc. They, in fact, should be licensed as well, in our view, absolutely.

Mr. Kormos: Is it the government's job, though, to protect an employer who's foolish enough to put somebody into a high-level security position without requiring them to do a criminal-record check? Is that the government's job—or the state's job, rather?

Mr. Fenton: I don't want to get into it. It's sort of—

Mr. Kormos: I'm not saying it's the government per se; is that the state's function?

Mr. Fenton: We think that basically anybody who is providing security should have to have a security licence. That's our position on it. That includes management people in large corporations, yes. We think that that security manager is going to be exposed to things like alarm system codes, keys; they're going to know how to disarm alarm systems; they're going to be exposed to schedules of guard movements and things like that. That's a position of trust, and those people should be properly vetted.

Mr. Kormos: Where would you rank your company in Ontario: amongst the top five, top 10?

Mr. Fenton: Top five.

Mr. Kormos: Have you been at the table on the regulation development?

Mr. Fenton: No. We understood from the Law Commission of Canada what was coming. We understood that it was going to be the Canadian General Standards Board. We're quite happy with that, the 40 hours of training; we're in favour of that. We're obviously in favour of licensing in-house. I don't want to put too sharp a point on it. We know that that's going to result in business opportunities for us.

Mr. Kormos: Sure, but there's been discussion from the get-go about at least two levels of licensing: one for the more passive, what I call the traditional guard, the watchperson, and the other for what I would call the parapolicing, and you made reference to the policing function. Do you agree with that? What about the creation of these two classes and the standards?

Mr. Fenton: It's a nice concept. However, here's the situation: At any given time in a large security company, especially given turnover rates—for example, business at Christmas often multiplies by about 20%, so you can very easily end up with one of these passive people in a shopping mall. It's not supposed to happen, but it does happen. It's very easy for it to happen. So there's always going to be that sort of thing.

The other thing is, a lot of people in the security industry want to progress. One of the reasons we think we can keep people in the industry is by training them up and moving them up through the ladder. What that means is that they are going to get more training as they go up the ladder. So dividing them into categories to some extent is going to eliminate some career opportunities for them.

The Chair: Thank you, Mr. Kormos, and thank you, Mr. Fenton, for your deputation on behalf of Intercon Security.

1130

INSURANCE BUREAU OF CANADA

The Chair: I would invite our next presenter, Mr. Richard Dubin, vice-president of investigative services for the Insurance Bureau of Canada.

As you've seen, Mr. Dubin, you have 15 minutes in which to make your presentation, with the remaining time distributed evenly afterward. Welcome, and please begin.

Mr. Rick Dubin: Thank you very much. Good morning. I'm Rick Dubin, vice-president, Insurance Bureau of Canada, for investigative services. We've also got a written submission that we left today.

The Insurance Bureau of Canada is a national trade organization that represents the strictly private P and C—property and casualty—insurance industry. It represents insurance companies which are licensed in Canada that provide more than 90% of the private home, car and business insurance throughout Canada. It focuses primarily, where we are right now, on organized insurance crime, primarily organized auto theft and organized, staged auto collisions that deal with accident benefits and bodily injury, which tie in the service supplier fraud such as rehab centres. We realize that it has a great effect on innocent policyholders, but very importantly, their lives are in jeopardy. You've seen that 30 or 40 people are killed every year as a result of auto theft. We are involved in the detection and prevention of organized insurance crime and very much to save the lives of innocent individuals, not only from auto theft, but as a result of staged auto collisions where people are injured as well.

The main reason we're here today: Our submission is that under subsection 2(7) of Bill 159, it basically states that the act currently exempts licensed insurance adjustment agencies, insurance companies, and their employees or agents while acting within the usual scope of their employment. Right now, the Insurance Bureau of Canada's investigative services are not included within subsection 2(7). On behalf of the insurance industry and IBC, the Insurance Bureau of Canada, if licensed adjusters, in-house adjusters and independent insurance adjusters basically are currently exempt within subsection 2(7) of Bill 159, we're asking that it be expanded to include the Insurance Bureau of Canada's investigative services. None of these entities, including IBC investigative services, have anything to do in any way with security services. They all work exclusively in investigation of insurance crime, strictly on behalf of licensed P and C insurance companies. We are, as well as the licensed insurance companies, one of the most heavily regulated industries in Canada, both provincially and federally.

Right now, the insurance companies are licensed by FSCO, the Financial Services Commission of Ontario, in

order to basically watch the market conduct of insurers; independent adjusters are in the same boat, and so are we. FSCO has the capability to discipline severely by threatening the licence of independent adjusters, licensed insurers, and to prosecute and involve serious fines. It is therefore asked that the regulation include investigative services. We're also asking—what we consider key—that you maintain the exemption for independent adjusting agencies, for licensed insurers and their in-house adjusters and to include in the exemption as well that investigative services be added to that section.

Very quickly, the IBC is a national trade organization that represents about 90% of the property and casualty industry. In the submission you'll see what the history is. Basically, we have 80 years of investigation. It started as early as 1923, as a result of different bodies that joined together, such as the Canadian auto theft bureau and the fire underwriters' investigation bureau; one dealt initially with auto and the other dealt with fire. Later a number of these merged. The FUIB joined with the CATB, which was about 1940, and when it came to 1973, the FUIB, which actually is recognized in the Alberta legislation on private investigators and security guards—that has exempted both independent adjusters and licensed insurers and their employees acting in the ordinary course of their business as well as FUIB, which basically is us turned into the ICPB or the Insurance Crime Prevention Bureau, which is what we operate today. In 1977, we merged with the Insurance Bureau of Canada. That gives you an idea of where we are today. Our patent name, which still stands, is Insurance Crime Prevention Bureau.

Our main mandate is only to conduct investigations on behalf of member companies to detect and prevent insurance crime, primarily organized. Going back about two years ago, we concentrated more on individual insurance crime, such as property losses and arson—basically exaggerated insurance claims. But with the increase of auto theft, with people getting killed in auto theft, with an increase in organized, staged accidents, which is strictly organized crime—in here you'll see that we have worked internationally with the FBI, with Interpol, NICB, the National Insurance Crime Bureau. It has been proven, and we have cases that show, that organized crime is supporting guns, drugs and terrorist groups today.

Currently, we're dealing with many government agencies, such as the Honourable Anne McLellan's area, because we have a concern at the ports with vehicles being stolen; 171,000 vehicles are stolen every year from Canada. These are high-end vehicles, and they are funding terrorist activities. We also deal with other government agencies, such as the Canada Border Services Agency, in order to stop vehicles from being exported. We work with a number of police forces, and I'll get into that.

Our head office is located in Toronto. Originally, under the Personal Information Protection and Electronic Documents Act, federal legislation, ICPB, which is the patent name, now changed to Investigative Services, was one of the first of two designated investigative bodies. As long as we act within our mandate to prevent and detect insurance crime, we can investigate matters that even have personal information without the consent of the individual as long as we have reasonable grounds to believe that a Canadian law is being breached, that a contract of insurance with a member company is being or will be breached in terms of committing fraud.

1140

I should stress that P and C insurance industries have been regulated both provincially and federally through superintendents of insurance, through FSCO in Ontario and federally through the Superintendent of Financial Institutions. We basically are very much subject to market conduct, and there are very serious consequences for independent adjusters and licensed insurers as well as ourselves, since we act strictly on behalf of licensed member insurance companies. They have the right to revoke licences and impose fines.

We're involved in repatriation programs where vehicles are exported to foreign countries—these are high-end vehicles. We work with other countries such as Poland, Lithuania, Panama, Costa Rica and so on—we even got cars back recently from Russia—for the benefit of the public. That is the only service that is outside, which is a fee-for-service, where we want to return the vehicles to the rightful owners.

I should mention that in Ontario and Alberta at one time they were doing what we call "re-VIN-ing." This means that if they recover a stolen vehicle, they have to identify what the true VIN, the true identification number, of that vehicle is. In both Ontario and Alberta they have turned that process over to us, Investigative Services, because we are experts in the identification of these vehicles. We also work with the provincial auto theft team in Ontario. Two members are with them in order to assist in identifying organized auto ring activity, seizing these vehicles with them and identifying them to prove that they are stolen vehicles.

We lecture, on an ongoing basis, to police colleges, particularly in Atlantic Canada, because we consider ourselves experts in their area. We have 56 investigators across the country; 16 in Ontario. The majority of them are ex-police, with very long service. We realize that auto theft affects Canadians, costing, conservatively, over $3 billion a year—171,000 vehicles are exported from Canada; 200,000 leave the United States. We work with the National Insurance Crime Bureau in the United States and with other bodies and other police agencies. We have MOUs with several police bodies across Canada, such as the Toronto Police Service, Peel, Guelph, London, Durham, Quebec City, Halifax, and the list goes on.

In Ontario what we're really suggesting is something similar to what exists in Alberta. They included independent adjusting agencies as being exempt within their section in a similar act. In Quebec, which has a new law, they exempted us from training and testing, because of our expertise and background in law enforcement. What we're suggesting as well is that under Bill 159 not

only do you maintain the exemption for independent adjusting firms, licensed insurance companies and in-house adjusters as long as they're acting in the ordinary course of their employment, but that it be expanded to include Investigative Services, previously known as ICPB, which is known world-wide as one of the key fighters against insurance crime, particularly organized insurance crime. We're asking primarily that that take place.

One thing to mention is that Investigative Services is part of the Insurance Bureau of Canada's board of directors, which comprises the chief executive officers of Canadian-licensed P and C insurance companies, together with the chief executive officer of IBC. In the event that Investigative Services and its investigators are not exempt from the requirement of licensing, we do ask, as in Quebec, that we be exempted from any training and testing requirements because of our expertise that we've just discussed. Unlike private investigators, we are subject to the oversight of the entire P and C insurance industry, as represented by IBC's board of directors, which are CEOs of our member companies. There is no history of public complaints concerning the conduct of investigations of Investigative Services and its investigators.

Finally, based on the foregoing, IBC asks that IBC Investigative Services and its investigators fall within the exemptions of subsection 2(7) of Bill 159.

Thank you very much, everybody here, and Mr. Chairman.

The Chair: Thank you, Mr. Dubin. That was precisely 15 minutes, so we thank you for your deputation on behalf of the Insurance Bureau of Canada as well as your written submission.

UNITED STEELWORKERS, LOCAL 9597

The Chair: I would now invite our next presenter, Ms. Gwen Makkai, president of the United Steelworkers, Local 9597. Ms. Makkai, I remind you that you have 15 minutes in which to make your presentation, with any remaining time to be distributed evenly among the parties afterwards. Please begin.

Ms. Gwen Makkai: Hi. Good day to everybody. Thank you for hearing me.

I represent close to 4,000 members in Ontario. I am here to discuss our position on the changes to the act that replaces the Private Investigators and Security Guards Act.

Our members work at various locations such as airports, construction sites, industrial and commercial buildings, Parliament Buildings, hospitals, transfer stations, apartment buildings, gated communities and auto plants, just to name a few. They are proud of their work and should be recognized for the role they play in securing our communities. Whether they are protecting property, people or the environment, they are our first line of defence.

We understand the importance of across-the-board training. Many security companies send newly hired employees to sites without any training at all. These are referred to in our industry as "warm bodies." This usually happens when they are short-staffed.

The reason I have come here today before you is to bring to your attention a concern we have in regard to the training of our senior members in the security workforce.

At least 50% of our members are over the age of 45, up to the age of 80. Many of these members have been working in this sector for many years, some as a result of plant closures, indefinite layoffs, injuries on the job that prohibit heavy labour, or because they wanted a career in the security industry.

These people have worked many years in this industry. They have worked at several locations in different cities, counties or municipalities learning life skills and abilities to perform their duties. In most cases, the clients set out the duties that security officers will be required to perform. Some may or may not have taken special security courses, but that does not diminish their value to the clients in terms of on-the-job experience. We have grave concerns that many of our elder members may lose their jobs by failure to attend or successfully complete an accredited education course. We are, at this point, unclear as to what your proposal for training will be. For example, will the member have to pay for training or will the employer pay? Could the member lose their job due to the inability to pass a course when he or she has already been successfully performing the duties for many years?

We would suggest that these members be grandfathered due to the credited work they have done as well as their years of experience and service. On-the-job training is far better than reading a book. A law and security course at a community college may cost $5,000 or more. This would be a two-year course, and in most cases when you graduate you work for $7.70 per hour minimum, and that is only if you're fortunate enough to be in a unionized workforce. Even within unionized workplaces, wages vary significantly. Those who aren't under a union contract are paid minimum wage. If you are lucky you may be able to get a job as a police officer once you have worked in the field as a security officer for two years.

There are a few sites that pay higher wages. Specialty sites may pay from $12 to $16 per hour. These are industrial sites: fire prevention duties, monitoring, and access control, for example. Training can be 40 to 80 hours on-site in order to work there. These sites are often manned by senior officers. Why? Because of their invaluable experiences in the field. Without all their accumulated training, it would be difficult for them to learn all that is required for the job. Most employees would not be able to handle the duties if they were new to this industry.

1150

The rules regarding security are often overlooked. Men and women are placed at sites without any training or a licence while they wait for the ministry to provide one. The industry has an overwhelming turnover due to low wages. Competition in the industry itself is depressed by the market, which creates a race to the bottom. They

compete on contracts, and the lowest bidder gets the job, regardless of what duties are required of them.

The only way security is going to become a career and not a short-term job is when the government takes a look at security as a profession. It's very difficult to make a living in the security industry due to the fact that the industry is unstable in terms and conditions of employment. Turnover in this industry is directly linked to inadequate wages, benefits and career opportunities.

We would submit that the government needs to consult with the union in developing training and regulations across the province. They need to ensure that all security providers are licensed and that only licensed security will be employed. They need to establish stable terms and conditions of employment, similar to the Quebec decree system, including the adoption of statutory minimum wages and benefits. This would stabilize the market by having the employers sell the services that they can provide to the client, rather than just what wages they are going to pay.

In closing, we would ask that the government take this consultation process even further by continuing dialogue with all the partners, especially in terms of training and licensing. Together we have an opportunity to make this a profession we're all proud of, and ensure that our communities and our security officers are safe. We would again point to the Quebec model of the decree system, as it has proven a workable model.

Another issue that I'd like to discuss is the licensing issue. The security guards in the province of Ontario are also subject to the Highway Traffic Act for violations. If I have a fine for speeding and it is not paid, they have the ability to pull my licence and take my job from me. That's another issue.

Mr. Kormos talked about our licences. This is what it looks like. Somebody can take my name, call my home and harass me on request.

Mr. Kormos: Can I show this around?

Ms. Makkai: Sure; pass it around. No problem.

The Chair: Thank you, Ms. Makkai. We'll begin our questions with Mr. Kormos.

Mr. Kormos: Again, you speak for the women and men out there, working real hard, wacky hours, out in the cold, out in the heat, dealing with cranky people, dealing with people in altered states of consciousness, I suppose is a fair way to put it, for very low wages. I agree with you 100%: We've got to find a way to grandparent the de facto, the existing licensed security guards. Make them subject to the uniform requirements, of course, right?

Ms. Makkai: Yes.

Mr. Kormos: Make them subject to the code of conduct, whatever that may be—hopefully it's a fair one—of course. Gosh, there are folks out there who for the last five, 10, 15 years have struggled supporting their families and trying to maintain households on these modest, modest wages. The reason they are there is because the job that they had in the factory is gone or that they suffered an illness or a disability that doesn't allow them to work at that high-wage job any more.

This bill has the capacity to put literally thousands of people out of work, people who haven't got the savings, who haven't got the RRSPs—when you're making nine bucks an hour, an RRSP doesn't make sense. There's no payback to an RRSP; there's no money to invest in it. So I'm just pleading with committee members that we should not let this bill go back to the House until there is a declared strategy, a plan, to save the jobs of people who have been working hard with integrity, doing everything they've been asked to do, for some significant periods of time.

The other issue—please, can Mr. Fenson get us the Quebec references that were referred to? It seems like that would be very relevant to what we're contemplating.

The Chair: Thank you, Mr. Kormos. We'll move to the government side. Ms. Sandals.

Mrs. Sandals: I was wondering if we could get some clarification about your request for grandfathering. Are you suggesting that people who have had some previous training should be grandfathered, so that there would be some previous training requirements in order to be grandfathered, or are you suggesting that all of your existing members should be grandfathered regardless of whether or not there's been prior training?

Ms. Makkai: In most of our situations, they've all been trained. It depends on what the training has required. Most of the training that a security officer gets is on the location. They do a small course or whatever with the employer, but it doesn't give them the skills and ability for the job; it's on-site training that's the important thing. My argument here is that they've already been doing the job for 10 or 20 years. Why do they need to be retrained?

Mrs. Sandals: So you're not suggesting that there be some sort of record that you can go back and look at in terms of what was the prior training. You're just saying, then, that all existing security guards should be deemed to have been adequately trained and be grandfathered.

Ms. Makkai: Yes, and because they've already gone through the training once, unless there are changes to the training that's required; then they would go in for extra training. But my concern is that the inability to maybe do some of the training may cost them their jobs.

Mrs. Sandals: But you're not suggesting that there's some record there that we could look at; you're just saying that all of the existing members should be grandfathered?

Ms. Makkai: That would be my idea, yes.

The Chair: Thank you, Mrs. Sandals. Mr Arnott?

Mr. Arnott: Thank you very much for your presentation.

In your concluding comment, you called upon the government to continue its dialogue with respect to training and licensing issues, and I would certainly support that. But in one of the questions that you responded to earlier, you talked about many of your members being former industrial workers. Yesterday, the Canadian dollar hit 86 cents US. In the last 12 months in the province of Ontario, we've lost literally tens of thousands of manu-

facturing jobs. Yesterday, it said in the paper that DaimlerChrysler is going to be losing 1,000 jobs over the next couple of years. I heard on the radio today that La-Z-Boy in Waterloo is going to be closing its operations, and hundreds of jobs are going to be shipped south. We've got a real problem in terms of the protection of our manufacturing jobs. That's another side issue that isn't directly related to this bill, but to some degree it touches upon it. So I want to thank you very much for bringing up those issues. We certainly appreciate it very much.

Ms. Makkai: One of the other issues too is that a lot of retirees do security to offset their pension, and to lose a job is obviously to lose food and whatever else they have to do. That's my concern.

The Chair: Thank you, Mr. Arnott, and thank you, Ms. Makkai, for your presentation and deputation on behalf of United Steelworkers.

ALGONQUIN COLLEGE

The Chair: Our next presenter comes to us by way of conference call: Mr. Robert Pulfer, who is a consultant with Algonquin College. Mr. Pulfer, are you on-line?

Mr. Robert Pulfer: Yes. Good morning.

The Chair: You're coming through loud and clear. My name is Shafiq Qaadri, Chair of the justice policy committee for the government of Ontario. I'd remind you, as your foregoing presenters have similarly had, that you have 15 minutes in which to make your presentation. Any time remaining will be divided evenly amongst the parties. Please begin.

Mr. Pulfer: I'm representing the Police and Public Safety Institute of Algonquin College today. Fundamentally, I believe my role today is to reinforce and support the presentation made by Mr. Dubois and Mr. Maher of Georgian College. There is a statement of facts that we have sent to you; Mr. Dubois covered this in the September 14 hearing. There are a couple of key points I wouldn't mind reiterating, or would you find that too repetitive?

The Chair: Please feel free to use your time as you wish.

1200

Mr. Pulfer: OK, thank you.

The 24 community colleges across the province of Ontario we feel will play a vital role in implementing Bill 159 in terms of development and delivery of the training standards and provincial testing sites.

Currently, the law and security administration and police foundations programs throughout the province have curriculum exceeding the basic training standards identified in the legislation. I note with interest Mr. Dubin has covered the CGSB, the Canadian General Standards Board, which currently has a 40-hour course. I agree 100% this is a good point of departure. We at Algonquin, as well as the other community colleges, barring any marked differences in the CGSB training standards, are ready to proceed with this training right now.

Of course, we are in the business of education, training and development, and we have the experience to develop the core standards for the industry in a timely and responsive manner. We have the ability to provide Bill 159 training standards in alternative delivery formats, allowing greater access by private security personnel, which may include computer-based delivery, compressed delivery, train-the-trainer and blended delivery models. By delivering these training standards through the colleges, recognition and credit can be given, resulting in bridging opportunities for personnel into full diploma programs like the law and security administration and the police foundations programs, which we refer to as career laddering. These colleges can also provide testing services for certification and recertification because of province-wide locations and experience in providing this service.

At Algonquin College, we feel that this training should have a very high level of consistency and accountability, and I feel that community colleges can provide this level of training with the consistency and accountability that would be needed for this training for this service industry.

That, fundamentally, is my statement to you, sir.

The Chair: Thank you, Mr. Pulfer. You've left a generous amount of time and we'll begin with the government side.

Mrs. Sandals: Thank you very much for your presentation. I just wonder if we could get some clarification. Are you talking about the current law and security course or the police foundations being—are you suggesting that they should be required for the training standard that will be in regulation, or are you suggesting, given your experience with those courses, that you could set up a shorter course that would meet the new regulatory standard?

Mr. Pulfer: I agree 100%. There's no need to go into a full diploma program like that as far as I'm concerned. What I do mean is taking the elements from law and security and police foundations, which I'm a professor in as well, and using the items in those programs that dwell on the lawful use of arrest and use of force, which is being regulated by the province. It's the blending of what we deliver right now and putting it into a shorter course. Referring to the 40-hour course by the CGSB, it would probably be adequate; maybe 40 to 70 hours, if we talk about having actual use of force being delivered.

Mrs. Sandals: So 40 hours plus use of force would be additional time. What you're suggesting is that once the standard is established in regulation, you would be well positioned to set up courses at various colleges around the province that would be able to deliver that standard.

Mr. Pulfer: Yes, ma'am. I've already developed a curriculum right now, and barring any changes from what the CGSB is presenting, I think we're probably ready to go very, very soon.

Mrs. Sandals: Thank you very much. That's very helpful.

Mr. Arnott: Thank you for your presentation. Can you hear me OK?

Mr. Pulfer: Yes, sir.

Mr. Arnott: You've indicated that the community colleges are ready to go and up to the job of providing the kind of training that is going to be needed under Bill 159. I wouldn't dispute that, obviously. But I was wondering, how many students do you currently have enrolled in law the and security administration and police foundations programs at Algonquin College? Do you have a big program now?

Mr. Pulfer: Yes. It's in excess of 700.

Mr. Arnott: Do most community colleges have those programs as part of their course offerings?

Mr. Pulfer: Yes, sir.

Mr. Arnott: Are there some that don't? Is it every community college?

Mr. Pulfer: I really can't comment on all the 24 community colleges; I'm only a professor and I'm not tuned in to everything that every college has. I think Rebecca Volk could probably answer that question, but I really couldn't comment on that.

Mr. Arnott: But most do, I gather.

Mr. Pulfer: Yes.

Mr. Arnott: That's good to know. Thank you.

The Chair: Thank you, Mr. Arnott. Once again, the Chair yields the remaining 10 minutes to you.

Mr. Kormos: Thank you, sir. It's Peter Kormos from Niagara Centre. Does the community college system have the capacity to conduct all the training for new entries who would have to comply with the new standards?

Mr. Pulfer: Yes, sir. It's our position that we have the space now to fulfill this training requirement when it's legislated.

Mr. Kormos: In view of the fact that the government appears to be contemplating a multiple classification—at least two: the most passive security personnel through to the most active; the parapolice, as I call them—do you think there would similarly be room for local secondary schools to participate, at least in the provision of the minimum standard of training for that most passive, watchperson type of security personnel?

Mr. Pulfer: I noticed, in a presentation on September 14, somebody calling those level 1 and level 2. Is that what you're referring to: the passive type of job and the type that might have to use arrest authority under section 494 of the Criminal Code?

Mr. Kormos: Exactly.

Mr. Pulfer: Yes, we definitely would be able to handle the extra training for what you call the passive, or level 1.

Mr. Kormos: But do you think the secondary school system, local boards of education, could have a role to play in this as well?

Mr. Pulfer: Yes, I believe they could, with respect to night education, continuing education—offered in that fashion.

Mr. Kormos: That's a wonderful answer; I really think it is. Because my interest is that the person who is working for a company which has been advertising, called AlarmForce, who sits in a head office in Toronto or wherever the head office is and monitors the alarm in your home and then calls the police if there has been an intrusion really doesn't have to know anything about powers of arrest and doesn't have to know much about application of force. He's more a dispatcher than an active parapolicing security guard. Do you, from your perspective as an educator, see significant differences in the various roles played by different security personnel?

Mr. Pulfer: You know, the presentation made on September 14 covered it very well. If there's a situation where somebody is going to be sitting there monitoring television screens and their only job is to call the police or 911, and if they never have a hands-on approach to the public with respect to an arrest under the Trespass to Property Act or the Criminal Code, I agree 100% that there should be different levels in this certification and registration, and I would support that.

When you have the person who is out and must make the arrest, of course, you take it to a whole new level. We don't want to get into another Patrick Shand type of situation. These security guards who take on the role of arrest must be aware of when they can arrest a citizen and how much force they can use. We do that by use of the Criminal Code for the powers of arrest and also the use of force that a person is allowed to use as a citizen.

Mr. Kormos: Quite right.

We've got approximately 31,000 licensees under the current Private Investigators and Security Guards Act, and nobody disputes the need for healthy and significantly higher standards, especially for the activist parapolicing security guard. But 31,000 jobs are at risk. Should there not be an effective mode of grandparenting? Do you think it's possible to develop a scheme whereby grandparenting can be done to preserve jobs? Let's face it: Many of these people in minimum-wage jobs are going to have a hard time because they simply don't have the skills that would permit them to compete in the current economy. Do you think there's a way of effectively grandparenting at least a significant portion, if not all, of those jobs?

Mr. Pulfer: That's a very good point. My response with respect to grandfathering, if it's going to be done, would be that some of these people could be grandfathered with respect to what you call the passive type of security guard. But persons who may be out there having to effect an arrest under the Trespass to Property Act or under section 494 of the Criminal Code do have to receive this training.

Mr. Kormos: What would you anticipate the tuition cost to be of the Full Monty, the full-fledged security guard program to give you the five-star rating to do the most active parapolicing type of role? What would the tuition fee be at a community college in Ontario, based on current tuition fees?

Mr. Pulfer: Mr. Barker, the dean of my school, could respond to that. I'm really not in any position right now to give you any amount. I apologize.

Mr. Kormos: I, of course, am concerned about the cost of this training, which everybody agrees is appropriate, but we're talking about a notoriously and miserably low-wage profession.

Mr. Pulfer: You are absolutely right. It would be very cost-prohibitive for some companies. We'll have to wait and have further conversation with Mr. Barker and the other community colleges to come up with some price structure, but I do agree that it could be a disaster for some companies.

Mr. Kormos: You, as an educator, have a role in explaining to your students. You want to instill professionalism in them; you want to instill pride in the work they're being trained to do. What do you say to your students about the wage levels and the prospects, the future of security guards' salaries in Ontario, especially in the context of the legislation before us?

Mr. Pulfer: It is a very tough statement we have to give these young people. We have had people from security companies in Ottawa come in and talk to my students in the intensive program, police foundation. These are quite brilliant young students who are looking for a role as security officers or police officers; they're driven toward that career. But when they find out they're going to be making $8.50 an hour, their mouths just drop in awe with respect to the training they receive at Algonquin College. The type of training we deliver is probably at the same level that the recruits receive at the Ontario Police College.

How do I respond to them with respect to that rate of pay? I basically say to them, "This could be a good career path for you." Many of the interviews throughout Ontario are now competency-based, so I tell these young people, "Go out and get life experiences with these security companies. Yes, you're not going to make big money, but you may get life experiences that will lead to your being able to answer these competency-based questions when you get to that interview with a police service." I try to tell them it's a good stepping stone, a great life experience, because what the police services in Ontario are looking for is competency based on life experiences. I try to use that as a stepping stone for them and try to encourage them to continue.

Mr. Kormos: Thank you kindly, sir.

The Chair: Thank you, Mr. Kormos, and thank you as well, Professor Pulfer, for your remote-access presentation from Algonquin College.

This committee stands recessed till 1 p.m. sharp.

The committee recessed from 1211 to 1303.

BURGESS AND ASSOCIATES

The Chair: Ladies and gentlemen, I'd like to call this committee back to order and in session.

I would invite our first presenter, Mr. Mike Burgess, the managing director of Burgess and Associates. Mr. Burgess, just to inform you of the ground rules, you'll have 15 minutes in which to make your presentation, and the remaining time will then be distributed evenly amongst the parties. Please begin.

Mr. Mike Burgess: Thank you, sir, and thank you for having me.

I come before you today in three capacities, actually.

One is as an independent business owner, having been in the business of training security guards, among other folks, in the province of Ontario for the last 10 years.

Second, in the capacity as an expert in the area of the use of force. I'm a pure product of the Ontario system, having been through the policing in the late 1970s. I worked at the Ontario Police College on and off for seven years, part-time and full-time. I'm an instructor, trainer and just about everything you can think of down there related with the use of force. My particular field of expertise is use-of-force judgment training, defensive tactics, training of facilitators and things like this. I can speak to some of the issues that have been raised concerning weaponry, handcuffs, batons and that sort of stuff, if you would like. I also want to speak very briefly to the standards that are already in place pursuant to regulation 926 of the Police Services Act, which we've been following here in Ontario since the early 1990s, within the same ministry that's helping develop these regulations.

The third area I'd like to touch on: I'm a sitting member of the Canadian General Standards Board, I'm on the national advisory board committee, I chair the subcommittee on core competencies and methodology delivery for the Canadian General Standards Board, and I also sit on the use-of-force committee as an adviser in my capacity there.

I can shed some light on what the standard currently says. I've brought some information with me, some excerpts of what we're currently working on. I can speak to what the standard has in place now, where we are with our revamping of this, the overhauling of that standard and the additions that we're bringing to it as far as the number of hours and the competencies that are involved.

I'm going to try to quickly go through this brief that I've brought, and I'd like to leave as much time as possible for you at the end to ask me questions. Rather than my trying to speculate on what I think you should hear, I want to hear what you would like to know and I can fill in the blanks for you as we go along.

It was my peers and I who were originally called to testify at the coroner's inquest into the death of Mr. Patrick Shand, so I can comment a little bit regarding the case itself and the things that led up to the death of Mr. Shand. One of the recommendations, and this is coming from my expertise since the early 1990s at the Ontario Police College, is that if we're going to download the responsibility for training on to the college system—and I am working within the college systems with several colleges, and my peers are working with several others—we have to ensure that the people who are actually going out to do this training know what they're doing. That goes without saying. I'll speak to this in a minute.

I have absolutely no qualms about the academic portions of the Canadian General Standards Board standard being taught at a lower level across the board by private suppliers or colleges or continuing education

programs wherever they may be, as long as we can ensure some sort of accountability for those standards.

One of the criteria as a use-of-force instructor that we've always held to, the best practice within policing and corrections, is that if I was the trainer teaching the course, I was not the same person who would give you the exam. There's too much politics, if you will. So this is one of the recommendations from the CGSB that we're putting forward: If you are the trainer, you will not be the examiner. Although in-house training within security companies themselves may be a very good thing, I think the examiner should be from outside that company. That has been a best practice here since the 1990s. We've done that at the police college etc.

My recommendation on page 3 is that the definitions of "instructor," "examiner," "facilitator" and what we know as "use-of-force instructor" be actually entrenched in the legislation and not left open to the regulations. The main reason for that is the misinterpretation of the written word. Some people can think that they're qualified, but unless we specify what a qualified instructor is, it's going to be left open.

I agree that we need a two-tiered system. We need a system for what Mr. Kormos has called the watchman type, although that's a huge area. They don't have the responsibilities of interacting with the public as much as a proactive-type security officer would, and I agree that the level of training needs to be differentiated there. The government has obviously made inroads with the CGSB to use that as a platform to build on for that level, and I agree with that. We have an overhaul to do, and I'll speak to the length of training as far as the CGSB standard and where it's likely to end up down the road, in the not-too-distant future.

Three areas that I want to very quickly speak about are, what is a qualified examiner, what is a qualified use-of-force facilitator, and what is a qualified use-of-force instructor? The course training standards and the courses themselves were tasked by the ministry to the Ontario Police College to design and develop for delivery to police officers here in this province.

A use-of-force instructor historically has about three weeks of training. They are normally involved in refresher training and recertification annually, which is something that is being suggested under this bill. Those folks have a very good understanding; they have a bit of experience in the industry. We train them an extra three weeks or so to refresh the memory, skills, knowledge and abilities of front-line officers in both levels, especially use of force.

1310

The second category is a facilitator—most people will understand that term—or "master instructor." These are the folks whom the police college themselves use to train raw recruits from zero and up. I've trained many master instructors for the Ontario Police College in the defensive tactics section in my years there. Those particular courses run at least 12 weeks and they're very intensive. We need to see that this instructor is able to train and teach people who have problems and issues and they can be re-mediallized etc., but they're not use-of-force instructors. They're well beyond that level. They're specialists, especially in the areas concerning the use of force, handcuffs and batons, and of course, in the police environment, other things, weapons that they have access to.

As far as examinations are concerned, we're talking about standardized testing. I agree with that. Examiners, like I mentioned, for recertification programs: It would be fine that a use-of-force instructor could actually refresh their memory but somebody else should probably do that testing. As far as raw recruits are concerned, it's often done. A use-of-force instructor is actually working under the tutelage, if you will, of somebody with more credentials in order to train a raw recruit and then examine them at the end of the day.

Just while I'm on this, something that was raised this morning, competency-based training, is becoming the norm now across the industry. The law and security and police foundations programs speak mostly in this province to academic-only learning and it's not what the industry wants. I can tell you from the feedback from my lectures at Federated Press and working with the chief instructors and chief security officers in this province that they need people who are more well rounded, have good people skills, have good judgment and decision-making abilities and are able to do everything possible in their power to avoid altercations. That's exactly what the industry is looking for. Academic-only training only addresses a very small portion of an overall competency for an officer.

There was some mention this morning about grandfathering and the areas surrounding the competencies of people who have been on the job. I've trained police officers and security officers and people who were marginal in their academic and they've walked into some scenario-based training, whether it be video interactive or whether it be real life, and they perform brilliantly. In my mind, as an evaluator, I would sit and look and observe this person. Would I go to work with this person? If the answer was yes, they passed. I didn't care if they were at 51%, but could they apply academically what they've learned? That was the main thing.

In policing, there are four things that speak to the standard. One is, are they confident in what they do? Number two is, are they competent and can they display that competence? Number three, do they demonstrate good judgment? And, number four, do they demonstrate good restraint? That's the criteria. It's not all about academics. It's about if they apply what they've learned in the real world. Can they avoid the altercations? Can they make a right decision under a stressful situation?

On the next page over, I've been doing some work with OACUSA, which is the centralized trainer in Ontario for special constables. There's a very limited amount of training done for our special constables in this province, I'm sad to say. What you see there is a definition of a use-of-force instructor, and I'd like to read it just quickly:

"Use-of-force instructor means: A person who has completed the use-of-force instructor's training course or defensive tactics facilitators course, or equivalent, offered by the Ontario Police College. Examples acceptable for equivalency would be graduates of any course from a recognized Canadian police college or a use-of-force instructor's certification from a ministry-approved Ontario college of a standard equal to or greater than the course training standards for those two programs at the Ontario Police College."

If we're going to download the responsibility for para-police or the next level up, we need to ensure that those people who are doing that training know what they're doing. These standards, my friends, have been in place within this ministry since 1992. All we have to do is de-police them, if I can use that term, take out the police material.

When I teach these courses, I'm mostly involved with organizations like the Ontario Lottery and Gaming Corp. We've trained officers for about 14 of their sites. We do corporate training for places like the city of Mississauga and the city of Kitchener, their in-house security forces. These folks are trained to a very high level and consequently get a very high wage. I would tell you that it's running between $14 and $22 an hour in those environments. I know that in private industry it is not that high, but the bar is a lot higher within those industries than it is perhaps on the regular street level.

In special constable training, they're faced with a lot of the same issues as policing but regulation 926 doesn't totally cover them. What we're now looking at is special constables being downloaded police duties. You've heard from Mr. Creamer and Brenda Russell this morning about the downloading of more responsibilities on to municipalities to take care of things that used to be police issues, such as noise enforcement and animal control, to a point. So the level of training within those environments has to be raised; there's no question about that. My major concern for municipal law enforcement officers is that we're downloading—for example, in Ottawa they have parking control officers who are security guards who are doing parking enforcement for the city of Ottawa. I can say that because I trained all those nice folks up there. Yet in the same forum, we have people who work for the municipality who will be exempt. That didn't make a whole lot of sense to me, personally. Again, my point was, why reinvent the wheel? We've had these guidelines in place.

As far as grandfathering is concerned, I would rather see somebody tested on a competency base rather than an academic base. I think most of those people, if they've got the good common sense to survive in a security world for 10 years or so, probably could get past a competency-based test. I don't have a lot of problem with that at all.

I've pulled some excerpts out for you from the Canadian General Standards Board. The requirements for the training programs: It was mentioned in a couple of speakers' presentations about the standard being 40 hours; another one mentioned 80 hours. The standard itself was last drafted in 1999. It is currently undergoing an overhaul, if you will. We've been at it since last November, when we first met in Ottawa. The standard was 40 hours; it probably will not be 40 hours when we're finished with it. In the document that I have given you, this is not the standard as it sits. This is what we are still talking about at the table, and I don't think there are any big secrets here about what we are talking about.

What was missing from the original standard were the principles and guidelines regarding the use of force, effective communications regarding the use of force and the articulation of what it is that people do on a day-to-day basis. When we looked at that, that brought the total to 52 hours. You've heard from our education colleagues at Algonquin this morning, and others. I think if you asked them to go back up to A4 on that same line, it's very, very difficult to teach a security officer legal authorities in six hours. I've been doing this for a long, long time, and it is very, very difficult to do that in six hours.

Now, having said that, because I chair the core competencies committee and the methodologies of delivery, we're also looking very seriously at alternate methods of delivering training. We're now in the Internet age. Most things can be accessed on-line. Our only difficulty is how we avoid cheating. We're looking at proctored exams to get around that. These are all things that we're still talking about as far as the CGSB is concerned.

There is a movement among some of us where we would like to see a physical skills component added into this, and that being the case, we're going to be looking at closer to an 80-hour standard, and that's just for people who are going to be at a tier 2 level. So we'll have academic and physical skills if that is a requirement.

Again, this is a voluntary standard. I can't stress enough that it is not a mandatory requirement, that it is only for federal procurement.

I'm going to very quickly flip through a lot of this other material. There are some outlines in here as to what a security trainer should look like; there is the minutes of our last meeting in there. There's a document at the back that says, "Teaching Credentials for Security Use of Force, Physical Skills Training and Judgment/Decision Making." This is an outline for a college-level program, which would be 80 to 120 hours, to certify use-of-force instructors to teach security officers. This parallels the APA, the Atlantic Police Academy; the CPC in Ottawa; and the OPC here in Ontario. It has all the same type of content in it, minus the police stuff. So this is where my colleagues and I have done that.

One of the premier instructors in Canada recognized for his expertise in use of force is Mr. Robert Proulx from Stittsville, the Ottawa area. There is a letter there which concurs with what I'm telling you here. I'd just like to turn it over to you now and answer any questions that you have.

The Chair: Thank you, Mr. Burgess. We have time for instantaneous questions with no dependent clauses. Mr. Arnott.

Mr. Arnott: Thank you for your presentation.

The Chair: Thank you, Mr. Arnott. Mr. Kormos.

Mr. Kormos: "Policing" is an interesting phrase. Remember the fellow from the Orillia-area community college in Toronto last week? He got a little testy with me because I had referred to the caricature style of some security guards, especially in court. He got really defensive about it because he felt that it was a single stream: security guard/police officer. My interest in this legislation is that it's very much two different streams. So could you take that to somewhere logical?

Mr. Burgess: I agree with you. As we raise the bar to turn this more into a profession and less of an afterthought—"Because the fast-food industry isn't hiring" kind of thinking—we are starting to actually raise the level of competencies. I can see more and more responsibilities being downloaded from municipalities. It's already happening. We're getting outsourcing as a normal way of municipalities saving money. They're downloading this on to the security industry, which makes it a—

The Chair: Thank you, Mr. Kormos. Ms. Sandals.

1320

Mrs. Sandals: I'm interested in your notion of the qualified examiner and how examining should take place. First of all, who do you think should be responsible for examining, and, given that there are 30,000 to 50,000 people who have to be examined, how would you manage competency-based exams as opposed to academic exams?

The Chair: Thirty seconds, Mr. Burgess.

Mrs. Sandals: No 30-second answer.

Mr. Burgess: If we have a standard, we need to have standardized testing. We need to have subjective instructors who can actually subjectively evaluate, especially people who are at the higher levels. From my information from the security industry, that is not the norm. The norm is the first level, the observe-and-report type folks, so it cuts that number down very significantly. Leverage is the only answer. We have more instructors/trainers and we're ready to go with that. Train more trainers to actually leverage that out is the quick answer.

The Chair: Thank you, Mrs. Sandals, and thank you as well, Mr. Burgess, for your very efficient replies.

INTELLIGARDE INTERNATIONAL

The Chair: I would now invite our next presenter, Mr. Ross McLeod, who is the president of Intelligarde International. Mr. McLeod, as you've heard, 15 minutes to present, with remaining time, if any, distributed evenly among the parties. Please begin.

Mr. Ross McLeod: Thank you. As the Chairman said, I am Ross McLeod and I am the president of Intelligarde. I've been active in the security industry for 23 years, helping to form industry associations and in chairing them. Intelligarde is a benchmark amongst international criminologists and police intellectuals for leading-edge organizations that occupy that constantly evolving space between the traditional security industry and basic-level police work.

Most of the established companies in the industry have been calling for all those providing security and investigative services to be brought under the act, and for a baseline of mandated training. To the extent that Bill 159 does this, we are happy with it.

There are other sections of Bill 159, however, which are very problematic.

Subsection 15(2) gives the registrar the right to immediately suspend a licence while waiting for additional evidence or the request for an appeal of the suspension. As a practical matter, the suspension of an agency licence will have the immediate effect of destroying the business. Thus an appeal or continued investigation becomes academic. I think this power of immediate suspension is draconian, and an agency licensee should be allowed a hearing with full legal representation before the asset value of the business is destroyed. In the case of error on the registrar's part or new supporting information coming to light, the suspended agency cannot be reconstituted.

The portability of individual licences is the elephant in the room that everybody is not mentioning, except that section 13 of the old act is gone. Portability is a business disaster for the industry. Loyalty, confidentiality and predictability would all be gone. It would be a human resources free-for-all and chaos, as companies with short-term, short-notice contracts such as festivals, special events and labour unrest advertised a few extra dollars pay and scores of employees would phone in sick with their regular employers.

My company pays excellent health benefits. Many of my smaller competitors do not, but this saving on their part will allow them to bribe away my employees for a weekend or a week. What about WSIB responsibilities? Which of, say, three employers is going to pick up the tab for the neck, back or ankle sprain? When the public wants to sue—for example, wrongful hire, wrongful retention, inadequate training—which of the several companies that the individual is working for do they file against, or perhaps all? Some of my Fortune 500 clients require six weeks of additional on-site training. Would I do that for a free-floating security guard who is here today and gone tomorrow?

The portability of licences issue simply reflects a non-appreciation for business processes, while the immediate suspension powers give the registrar nuclear weapons when conventional weapons would more than suffice.

This draft act wants to give the registrar, by regulation or order in council, the power to forbid certain colours in uniforms and equipment for personnel and vehicles. Let's be perfectly clear about whose issues these are and to which special interest group this draft act owes these issues: police unions and particularly the Ontario Provincial Police Association, whose members and former members populate the registration branch. The great red herring, canard or non-issue that drives these open-ended restrictive sections is the belief that the public will mistake or confuse a private security guard with a public police officer.

I have asked registrar Herberman, who's here today, if this has ever happened, many times over the last several years and as recently as weeks ago, and his answers have been consistent and categorical: There has never been a written complaint from the public in Ontario about confusing a private security guard with a public police officer. Not a single complaint. Why, then, this obsessive focus on uniforms, equipment and language? After all, police forces across the province and across Canada have not themselves managed to harmonize uniforms and equipment, and if they follow their American counterparts—as they usually do—they will constantly change with fads and fashions and the slick and sophisticated marketing by law enforcement vendors, mainly out of the USA.

Twenty-four years ago, when I set up Intelligarde with its vision of being to the police industry what paramedics are to the medical industry, I deliberately chose colours, badges and logos that were highly different from Canadian police, with their blue uniforms and yellow police cars. I have invested huge sums of money and branding into my black uniforms and black patrol cars and yellow checkerboard all over the uniforms and cars. We repeatedly win excellence awards like the Consumers' Choice Award, which are run by the Gallup organization, and are really all about brand. A quarter of a century to establish the leading brand and now this draft act is telling me that a seconded police union member is going to say, "No, sir. Black is ours exclusively, because we chose it a few years ago and we'll keep it for ourselves until we decide on a new, trendier colour." This is outrageous and cannot stand in an act that purports to bring the industry into the present and serve the community for a generation or more.

The security industry is very much in, and highly responsive to, the present time. It is the special interest groups' silly turf protection reflected in this draft act that has to grow up and get with the times.

Segments of our industry need similar equipment to public police and special constable organizations simply because we do similar work. It's an occupational health and safety issue. Supreme Court Justice Binnie, in the Daniel Asante-Mensah v. Her Majesty the Queen (Ont.) case, in his analysis section, relies on the criminological text—based on Intelligarde—The New Parapolice, by Dr. George Rigakos, and on my book Parapolice: A Revolution in the Business of Law Enforcement, to point out that Intelligarde has arrested 30,000 people in the last 20 years, and other security organizations have also followed this route. Our North American city life has for many years relied on this level of private-sector order maintenance in our malls, housing projects and schools.

Recent OPP salary awards in the order of $80,000-plus for senior police constables bring society's dilemma into sharp relief. There are good reasons why private security now outnumbers public police two or three to one in Canada and by seven or eight to one in the United States. Public police salary awards have priced themselves out of the low-end policing market. You cannot have 45-year-old constables making $80,000-plus basic pay doing work that high-end well-trained security officers can do very much cheaper and, frankly, better, because it's their entire focus.

But wait, there's more. Seconds ago, I used the words "security officer." Under the draft act, I will be charged with using the word "officer," and the quarter-century investment of my multi-million-dollar business will be destroyed through immediate suspension. Why? Well, presumably the public might be confused between my security guard and a public police officer.

Under this draft act, you can be a pest control officer, academic officer, company officer, executive officer, financial officer, information officer or operations officer. In fact, according to Wikipedia, "in some organizations that use the term, all but clerical workers are termed 'officers.'" But in Ontario you can't be a security officer. Why? Whose interests are being served by relegating and freezing security personnel in the lower-status term of "guard"? There is only one term or noun that is properly owned by the public police, and that is "police." In Britain, that word has been attractively logocized and is ubiquitous on police personnel and equipment.

1330

The other forbidden words in this draft bill: "detective" or "private detective." Seriously, generations of readers have clamoured for Mickey Spillane books and Mike Hammer films featuring the familiar themes of the private detective. The phrase originally comes from the Bow Street Runners. This was one of several British and Irish private police forces that predated Sir Robert Peel's London Metropolitan Police by two generations and from which Peel heavily borrowed nomenclature like "detective" and "inspector." As for law enforcement, the public police have not been the primary maintainers of public order for 15 to 20 years. There is a legion of inspectors, officers, special constables and security personnel that are involved in the daily task of order maintenance and law enforcement, more so as we enter an age of international terrorism.

I cannot think of another example of a special interest group trying to get control of the very language that Ontarians use to describe their everyday experience and reality. It reminds me of George Orwell's dystopia Nineteen Eighty-Four. In chapter 3, the protagonist, Winston Smith, ruminates that "if all others accepted the lie which the Party imposed—if all records told the same tale—then the lie passed into history and became truth. 'Who controls the past,' ran the Party slogan, 'controls the future: who controls the present controls the past'.... quite simple. All that was needed was an unending series of victories over your own memory. 'Reality control,' they called it: in Newspeak, 'doublethink.'"

As a long-term practitioner in this vital industry that will grow by sheer necessity for the rest of our lifetimes, I ask you to shake out these small-minded, self-serving turf protectors. I invite you to join with the progressive and healthy-minded security organizations, comprised of tens of thousands of Ontario taxpayers who welcome mandated training and expanded inclusivity, to craft an

act that has the vision and flexibility to take us at least a generation into the future. Thank you.

The Chair: Thank you, Mr. McLeod. One minute each. Mr. Kormos.

Mr. Kormos: Look, you make a potent argument. Nobody's here from the OPPA or the PAO—

Mr. McLeod: I'm not surprised.

Mr. Kormos: Well, I'd have seen them jumping, and so be it.

What do you say to the fact that some of us don't think it's good that we've had to increasingly rely upon privatized policing? I accept your truism, but let me put it this way: If I'm going to get busted, if I'm going to get arrested, please let me get arrested, if I had my druthers, by a professional OPP officer or a Metro Toronto cop—what have you. At the end of the day, and that's not to say that the security guard can't do the same job, but if I had my druthers, I'd rather be arrested by a public cop. What do you say to that?

Mr. McLeod: I say you're describing a world that hasn't existed for almost 20 years. Most Canadians' first experience of authority is in a mall, through security guards. People are street-proofed; anybody under the age of 40 has been street-proofed in this country by saying, "If you're in difficulty or danger, if you're sick or you're lost, run to the adult wearing the uniform." It's part of our very consciousness.

We can't go back. You can't put the genie back into the bottle. We have to deal with the world we have, so the purpose of this act is to clean it up, polish it up, and make it good and make everything work together and dovetail in. That's all we want to do. We don't want to take over.

The Chair: Thank you, Mr. Kormos and Mr. McLeod. Ms. Sandals.

Mrs. Sandals: I wonder: Could you tell us how many part-time employees you have?

Mr. McLeod: Out of about 400, I would say no more than 20.

Mrs. Sandals: OK. So the majority of your employees are full-time employees.

Mr. McLeod: We try to minimize part-time.

Mrs. Sandals: And full-time would be how many hours?

Mr. McLeod: Forty to 44 hours a week.

Mrs. Sandals: So I'm wondering why you think that, if you are actually having your workers work 40 to 45 hours a week, they would be going off to moonlight for other firms in addition to that, why that would be an—

Mr. McLeod: Money, more money. When there's, say, a strike that starts in Toronto—if you read the security opportunities ads in the paper, the average wage in the province is what? I don't know: $9.75, $9.85 or $10 an hour? Suddenly the ads go in for $15 and $16 an hour and a lot of employees rush over for that short-term bounce in pay, knowing that if they're working for one of the big multinationals they can probably go and beg their way back in.

With the more sophisticated and complex companies, the job assignments are more complicated; they take longer to train. We don't want people going off for an exciting weekend at a strike somewhere, where they're going to get paid an extra $5 an hour and food, and then coming back and trying to beg their job back on Monday. It's extremely disruptive.

Mr. Arnott: I'm looking at the first page of your presentation. You talk about subsection 15(2) of Bill 159 giving "the registrar the right to immediately suspend a licence while waiting for additional evidence or the request for an appeal of the suspension." What is the law right now in terms of the registrar's power to take away a licence?

Mr. McLeod: He's sitting behind me, but my understanding is that if there is a big issue, the registrar calls a hearing, an inquiry, which is an adversarial proceeding and both sides have their legal representation there. If the outcome is negative for the company, then they proceed to dispose of the licence. But at least there's an opportunity to react there, to just say, "Your licence is suspended." It's in the nature of our business and, I would put to you, most service industry businesses, that the contracts just melt away as soon as you're not there for one reason or another. Whether you go bankrupt or whether you've been suspended, the other companies come in like sharks and just swallow the contracts.

The Chair: Thank you, Mr. McLeod, for your representation on behalf of Intelligarde International.

WOODBINE ENTERTAINMENT GROUP

The Chair: I would now invite our next presenter, Mr. Kevin Murphy, senior manager of security operations of the much-valued Woodbine Entertainment Group, ably representing itself in Etobicoke North. Welcome, Mr. Murphy. You have 15 minutes in which to make your presentation, and the remaining time will be distributed among the parties afterward. Please begin.

Mr. Kevin Murphy: Thank you, Mr. Chair. I'd like to begin by thanking the committee for the opportunity to speak to this matter, which by its nature will have a significant impact on the way security services are provided in this province.

During my 30 years of experience, I have seen firsthand an evolution from the days of a security guard being a fellow who walked around the building punching a clock, with limited skills and training, to an individual who must now respond to more immediate and varied demands or threats in the workplace and in the community. I feel it's appropriate that appropriate training accompany such a change.

Many security managers particularly, but not exclusively, in the proprietary or in-house area have recognized that for a number of sound business reasons it makes sense to ensure that properly trained individuals provide the necessary service. We have also watched our relationships with the public police at the municipal, provincial and federal levels mature and become more in-depth as a properly trained security team that can provide valuable support to those agencies. In many situations, the public police solicit the support of private security,

not only after the fact, but as partners in proactive initiatives aimed at crime prevention.

As private security inherits more responsibility for areas of the community which have been referred to as mass private property or quasi-public space, the standard for training and accountability rises, as does the expectation of the public to be treated in a respectful and professional manner. It is hoped that this legislation will foster an environment that will lead to a more responsive and responsible relationship between all concerned parties and participants.

My comments today will reflect on the areas of licensing, training, compliance and participation of all industry sectors.

Part II, section 4, identifies the types of licences that may be issued. One of these is a licence to act as a security guard. This suggests that there is a one-size-fits-all aspect to the security guard function and industry. Such is not the case, as there is a wide range of skills and demands that fit within that very broad description.

At one end of the scale is the security guard who watches a construction site or unoccupied building overnight or on the weekend. That individual, as a rule, has very little contact with the public. There is a low requirement of skills to perform these functions. It's basically to sound the alarm if something goes wrong. In addition to guards performing at these levels, there are also companies that choose to serve the limited market that these skills support.

1340

Many of the people who occupy these jobs have limited education and they may not be proficient in either of our country's official languages. However, over time, they have displayed a competency to perform in these limited roles. They provide valuable service to our company and make a positive contribution to their communities. It would be unfortunate if they were to become disenfranchised or unemployed as a result of this legislation. In fairness, we need to address this aspect of the industry as we contemplate change.

At the opposite end of the scale, there are guards who provide security to housing complexes, shopping malls, entertainment centres and government buildings who require a broader range of skills. These people may be called upon to intervene in physical confrontations, provide advanced first aid, enforce bylaws and respond to other calls for assistance as required. In many cases, the first responder will not be police, fire or EMS personnel; it will be on-site security guards who will try to deal with the situation until the public services arrive. In order to perform these functions, these people require higher levels of training. In addition, in order to satisfy the requirements of other legislation that affects occupational health and safety, they may be required to resort to certain types of equipment, such as batons, that require proper training.

I would ask the committee to consider the creation of a tiered system of licensing, or a system of endorsements to a basic licence similar to that of a driver's licence or perhaps a pilot's licence where a basic level of skill is achieved and then the endorsements follow as there are greater skills attained. This type of structure would allow many current employees to continue in their roles provided they show competency at the basic level. It would also provide some assurance to the public that guards are qualified in the use of certain types of equipment.

The program could also be used for service providers. This would help to define the marketplace and provide reasonable expectations for the purchasers of security services. A company could choose to restrict its business to either end of the scale or become a full-service agency. The purchaser of services would then have a guideline as to what they were paying for and be better positioned to attain important cost efficiencies in their businesses.

A second area of concern revolves around training. There is no doubt that in order to provide professional and competent security services, a basic curriculum of training needs to be identified. However, we should not allow the legislation to give rise to a cottage industry of trainers who would be uncertified or unregulated themselves. The delivery of training requires the same attention as the content of the training. We must ensure that training programs are properly certified, and that by requiring training as a condition of licensing, we do not expose the industry to those who would use the legislation to turn a quick profit.

In developing our in-house program, we followed the guidelines as set out in appendix A of the CGSB standard for security guards. We also developed a program for supervisors following appendix B. The shortcoming we found in the standard was that although appendix C identified mechanisms for audit and accountability, there wasn't an agency in place that would certify that a program was in compliance. This certification is essential in order to ensure public confidence in the quality of training provided to security guards.

As we cross the spectrum of activities in the province, we find that different areas are also subject to regulation from other legislation. In the entertainment field, the Liquor Licence Act, the Racing Commission Act and the Gaming Act also affect us. Hospitals have to deal with the Mental Health Act, and companies engaged in power generation and transmission have their own regulation as well. Even without the effect of legislation, art galleries and museums have their own set of standards to follow. Accordingly, even though a basic core curriculum may be identified in the regulations, there will be additional training required in order for the guard to be fully trained.

Secondly, the delivery of training should not be restricted to what I would refer to as retailers of security training. It should not be a product or service that is sold in the marketplace in the same fashion as automobiles. There should be a variety of ways for individuals and companies to obtain the necessary skills. That would include in-house programs provided by the employer, continuing education programs through our community colleges, distance learning and through the Internet. Training should also be affordable, both for the employee and the employer. I've noticed in recent months that

programs have been offered that purport to meet the standard that are going to have a price tag of upwards of $1,000 for an individual to go through. That's a pretty onerous burden for somebody to take on to get a licence, with no guarantee of employment at the end of the day. Notwithstanding that for other professions they would have to go through a college program where the tuition costs and the costs to obtain that education would be much higher, for the basic level of security guard it is an onerous burden.

While the content of the program is important, it is also essential that the candidate's comprehension of the material is well tested. It should be more than reciting words on a page. Many of our employees, particularly those who don't have English as a primary language, have the ability to make themselves understood and display the comprehension of the material that's put before them, but to put it into a written test would be a burden for them. They know what they have to do, they know how to explain it, but to put it in a sentence that most of us would recognize as high-school English might be a little difficult. We don't want to test English-language proficiency; we want to test whether or not they are capable of understanding the material and acting appropriately when put to the test.

Over the years, there has been concern within the industry that the registrar's office does not have sufficient resources to fulfill all of its obligations. We have often heard that the bulk of the registrar's time is taken up with reviewing licences and appeals. In order to ensure that there is compliance with the legislation, it is clear that this office will require a greater presence and a more developed infrastructure. This, of course, will require funding. These costs cannot be borne by the industry in the form of licence fees or levies. While it is reasonable to expect that there will be fees to be paid by those involved, the entire program cannot be financed through these means, and the ministry must ensure that adequate funding is provided. Anything less will be seen as a lack of commitment on the part of the government to ensure that these revisions meet the needs of the public in this area.

The final area I would like to address is the participation of all sectors of the industry in guiding its future. Since 2002, the Law Commission of Canada has examined the relationship between public police and private security, and it appears that one of the themes of its report to Parliament will be the need for transparent and accountable participation of the private security industry itself in its own regulation. This concept has been adopted in the current legislation before the National Assembly of Quebec.

In Ontario, we need to ensure that all the voices are heard and that the discussion is not dominated by one group over the others. In reviewing the private members' bills before the Legislature on this topic, it would appear that such a situation has arisen. Clearly, the content of those bills was largely influenced by the various police associations in Ontario. One might infer from a reading of section 40 of this legislation that their influence has been felt here as well.

This is not to say that their input in the process has no value. Their experience in developing curriculum and professional standards is valuable to the private security industry, but that is not the only source of knowledge and expertise. All stakeholders need to be heard as a consensus on the future of the industry in this province is achieved.

It is also important to recognize that we do not live in a vacuum, and that what we do here may affect the ability of companies and individuals to do business in other provinces as well. My concern there would be with companies and people who work and operate their businesses in cities, such as Ottawa, that border other provinces. A company could work in Ottawa and Hull if there was some harmonization of the legislation between the provinces.

The creation of a minister's advisory council is an important step toward achieving these goals. The activities of this group should not be restricted to the review of this legislation, but should be an integral part of an ongoing policy review going forward. The world we live in is changing at an ever-increasing pace, and neither the public interest nor the private security industry will be well served if it takes another 40 years to have a meaningful review of the governing legislation.

In conclusion, I would like to thank the committee for the opportunity to speak to these concerns and assure you of my continued support for your efforts in defining the future of the security industry in Ontario.

1350

The Chair: Thank you, Mr. Murphy. We have under a minute each.

Mr. Delaney: Among your very helpful remarks is one that says that "the delivery of training should not be restricted to ... retailers of security training." Two quick points: How would you suggest that standards for trainers be developed, delivered and adhered to, and secondly, what delivery channels would you suggest?

Mr. Murphy: I think we could develop a certification program for trainers and training programs in much the same way as we've approached the guard side. My great concern here is that training becomes an industry unto itself; it becomes a repository for retired policemen, who may or may not actually be qualified to get this thing done. That's my concern. I think the training should be delivered by professional educators experienced in this particular field.

Mr. Arnott: You work for Woodbine Entertainment, and I'm wondering if there are any issues that come forward as a result of Bill 159 that are specific to the gaming industry.

Mr. Murphy: I can't speak to the aspect of the facility at Woodbine that's operated by the Ontario Lottery and Gaming Corp. Since roughly 1999 we've developed an in-house program, perhaps to try and stay ahead of the curve, but recognizing that to be a responsible business, we need to ensure that people are trained properly. So in that sense, I don't think there's

anything specific. We would like to be able to continue with the in-house program, provided it meets the standard and is shown to meet the standard. It's a matter of flexibility in how we can deliver the training and scheduling for our staff, as well as the cost concern.

We currently spend about $170,000 a year on training staff. If we have to outsource that, that's going to raise that cost significantly, and we want to be able to control that. Specific to us, we want to be able to deliver the training, provided it is certifiable as competent.

Mr. Kormos: Again, this committee may well be drifting off course, in that my view of the state's responsibility is to ensure that a security guard has the minimum standard of training that ensures that the public will not suffer at his or her hand. What you need from your security guard in your workplace is up to you. I'm quite prepared to let you determine that. You've got the racetrack and the slots.

Mr. Murphy: We don't operate the slots themselves; we do the racetrack side.

Mr. Kormos: So you have security on the ground, but you've also got that penthouse security, the people who make sure that everything is working fine in terms of the pari-mutuels and things like that, that internal security. Have you reflected on whether or not they should have to be licensed in the same manner as the front-line, grassroots, out-there-interacting-with-the-customers security guards? It seems to me that they're two very different things.

Mr. Murphy: In our structure, everyone on our security staff is rotated through all positions. So if there was a tiered type of licensing, we would certainly approach it as the highest tier, so that all members of our staff would be able to go through all the various requirements and all the various demands.

The Chair: Thank you, Mr. Murphy, on behalf of Woodbine Entertainment Group.

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 528

The Chair: I now invite our next presenter, Pat Green of the Service Employees International Union. Do we have Pat Green in the house?

Interjection: Allan Murray is the spokesman for SEIU.

The Chair: Sure. The designate of the Service Employees International Union, please come forward.

I remind you, you have 15 minutes in which to make your presentation. Please begin.

Mr. Allan Murray: The face of security in Ontario has been changing over the last several years.

The Chair: If you might identify yourself.

Mr. Murray: My name is Allan Murray. I'm the secretary-treasurer of the Service Employees International Union, Local 528. We represent gaming and racetracks in the province of Ontario.

The face of security in Ontario has been changing. Right now it's going through a transitional phase. At one time, security was handled mainly by people near retirement age. It's now getting into where every community college in Ontario is offering law and security courses. So the majority of the people who are coming into the field are trained through a community college.

SEIU, Local 528, represents members from both classifications, and I'm here today just to indicate a few concerns that we have regarding our union members.

Many of our employers offer in-house training that is specific to the racetrack and gaming industries, so some of that is coming through at the moment. These courses are offered by former and current members of the police department through our supervisors in the different tracks who have connections with the police departments. The one I work for is Woodbine Entertainment. We have Metro police, we have RCMP officers, both current and former, coming in to do training for us. All of our members will be working for what are registered employers as opposed to licensee employers, as listed in Bill 159.

With that, I'd like to comment just on a couple of comments here. On licensing, with regard to training and testing, we do have certain members in the older group who, although they do their job excellently and know the work, may not be academically able to pass a written test. Verbally, they might be able to do it. I'm certain they would, that they could handle it, because they do have the training, they do have the education and they've got the experience in doing the job.

Another concern that we have through our union is regarding clause 11(2)(c), where it would be local police conducting the checks and investigations of the employees. That's carried on as well in investigations under section 20. Certain of our employers are large. They employ the local police to do paid duties, to the tune of several hundred thousand dollars. We feel that this could be a conflict of interest. We feel that any investigation should be done through the Ontario Provincial Police, which would not be in a conflict-of-interest area here.

Dropping down to section 40, which would not allow the use of such terms as "law enforcement": Our officers—there's another word I just used—our guards as such are able, through registration with different municipalities, to issue parking tickets, to arrest someone if they have been determined by one of our food and beverage supervisors to be intoxicated. If they put in their keys, if they get behind the wheel, they're capable of arresting these people. If someone is seen by the officer committing a crime, they're able to arrest. In fact, the guards that are out there now are going through these community college courses and being taught that, yes, these are your powers of arrest. They are coming in from the community college courses and learning their powers of arrest, and now they're being prevented from helping out the police by stopping an intoxicated person from getting behind the wheel, driving and possibly killing themselves and killing somebody else.

The term "officer": Through our contract negotiations as a union, several of our agreements have brought the word "officer" into their contracts. It's not a big thing. They have fought for it and they feel it provides them recognition. As has been mentioned here earlier by the

gentleman from Intelligarde, we have pest control officers but we can't have security officers.

Mr. Kormos: We have officers of the assembly.

Mr. Murray: Yes.

As I say, that is the major concern. I'm here today to try to protect the jobs that we do have of our current employees out there, of our union members, and I wanted to bring these concerns to the committee today.

1400

The Chair: Thank you, Mr. Murray. We'll begin with the Tory side. Mr. Arnott.

Mr. Arnott: You would support the idea of competence-based testing, as opposed to academic-based testing, I assume—

Mr. Murray: That is correct, sir.

Mr. Arnott: —to ensure that your current membership are given an opportunity to continue on in their current capacities.

Mr. Murray: Exactly.

Mr. Arnott: How do you design those kinds of competence-based tests? Are there other occupations that use that kind of approach, that you can think of?

Mr. Murray: It's an excellent question. I can't think of one off the top of my head, though.

Mr. Arnott: I'm not trying to say that I'm opposed to it; in fact, I think it's something I would support, quite frankly. It's just, how do you establish those kinds of tests so that they are a satisfactory mechanism for measuring qualifications and performance?

Mr. Murray: As I say, I understand your question. I cannot think of another industry at the moment, but I realize that, as I say, we're in a transitional phase with the security industry, and during this part we do have some members who may have problems on that. I think that some of the employers may have some suggestions along these lines that could help in this area.

The Chair: Thank you, Mr. Arnott. Mr. Kormos?

Mr. Kormos: Thanks for coming. Listen, 31,000 licensed security personnel—I've avoided either "guard" or "officer" by doing that—and a big chunk of them are at risk if we don't develop a way of fairly grandparenting them: a big chunk; I'll bet you at least 50%. Employers: So be it. But you know that some employers will use the opportunity to get rid of people, maybe in a unionized environment, who have been pains in the butt to management: quite competent security personnel but pains in the butt to management.

I appreciate the whole aspect of competency testing. I'm worried, though, that we're going to get so wrapped up in that that we create a heavy, weighted structure in that regard. The fact is that if somebody has been a security personnel for five or 10 years, has kept their licence that long, one has to presume that they've been doing their job. Right?

Mr. Murray: Yes, sir. Correct.

Mr. Kormos: So I really think it's important. I'm going to urge this committee not to let this bill go back to the House until we address this issue of grandparenting or protecting those workers' jobs. So between you, steel and other unions that represent security personnel, I think we'd better come up with a realistic and fair way of grandparenting these people. I appreciate the competency testing, but I'm not sure that that in and of itself doesn't create unrealistic hurdles for some of these people, because it's the testing in and of itself, as you well know, that can be an incredible hurdle. So we're going to have to move quickly on that, all of us.

Mr. Murray: Yes.

The Chair: Thank you, Mr. Kormos. We'll move to the Liberal side.

Mrs. Sandals: Thank you, sir. I wonder if you could tell us a little bit about the demographics of your membership, because you did raise the issue of competency testing versus a written test. Would you have any idea how many would have less than a high school education, how many would have English as a second language, just in ballpark fractions?

Mr. Murray: I'd say approximately 40% would have English as a second language. Of that, possibly 30% to 35% would have less than a high school education.

Mrs. Sandals: OK. Thank you. That gives us some sense of the group that we're dealing with.

Did I catch you correctly in saying that most of your members are involved around gaming and racetracks?

Mr. Murray: Yes. Our local concentrates on gaming and racetracks.

Mrs. Sandals: So that would be just your local, as opposed to the SEIU globally?

Mr. Murray: That's correct.

Mrs. Sandals: Thank you.

The Chair: If there are no further questions, I thank you, Mr. Murray, on behalf of the Service Employees International Union.

PSYCHIATRIC PATIENT ADVOCATE OFFICE

The Chair: I invite our next presenter, Mr. David Simpson, director of the Psychiatric Patient Advocate Office. Is Mr. Simpson present?

Mr. David Simpson: Yes.

The Chair: You are eagerly awaited. Please come forward.

As you've no doubt discerned by now, you have 15 minutes in which to make your presentation, remaining time to be divided evenly. Please begin.

Mr. Simpson: Thank you, Mr. Chair and members of the committee. We're pleased to be here today to present to your committee and to offer recommendations that we believe will strengthen this legislation to the benefit of our clients and all Ontarians. Let me begin by saying that we are going to only address provisions related to security guards, and then make recommendations specific to security personnel who work in hospitals and mental health facilities.

The Psychiatric Patient Advocate Office provides independent and confidential advocacy services and rights advice to consumers of, and those seeking access to, psychiatric services. Our office conducts public education; instructed, non-instructed and systemic

advocacy. Using information, education and referrals, we support self-advocacy and promote self-determination by working to empower mental health consumers to make informed decisions about their care, treatment and legal rights. We are partisan advocates for our clients.

Many consumers of mental health services come in contact with security personnel in a variety of settings, including hospitals, mental health programs and services, community drop-in centres, shelters, public transit, private property such as local shopping malls and other locations. At times, these interactions are less than positive, or when clients approach security personnel, often their complaints aren't taken seriously because of their illness or their mental health history.

We believe that the proposed legislation and its regulations can have a positive impact by providing proper regulation, control of training and supervision for security personnel, a transparent complaints process, a code of conduct enshrined in the law, a process for revoking and suspending licences, and the requirement that security personnel carry and produce identification.

The PPAO would recommend that the legislation not refer to security staff as security "guards" but instead that the act and definitions be changed to a more neutral word such as "personnel" or "staff." The term "guard" for many of our mental health consumers has a negative connotation, portrays an image of the criminal justice system and reinforces community stereotypes when these staff are utilized in mental health facilities and hospital mental health units. There is a sense that if a security guard is required to sit outside a mental health unit or to be present in such a location, the clients must be dangerous or the staff and other co-patients are in need of protection. We're concerned that this in fact reinforces negative stereotypes. Based on that, we would ask that the committee consider changing the word "guard" and substituting the word "personnel" instead.

Our office would also like to encourage the committee to write a purpose statement that would be enshrined in the legislation to set the tone, context and accountability framework in place while clearly articulating the purpose of the act. Such a measure is important, as it would reinforce key points, state principles of service delivery with special-needs populations and articulate the need for the delivery of service in keeping with the person's special and unique needs, including any disability that they might have. It would also reinforce that the requirement is to use the least restrictive intervention possible and attempt to de-escalate or defuse the situation. It must reinforce that service be provided in an environment of dignity, respect and in keeping with the special needs of the person. We therefore are recommending that the committee prepare a purpose statement that clearly articulates the purpose of the act and its principles.

1410

The inclusion of a complaints and investigation process in the act is a very positive step. It is also key to note that any person can make a complaint to the registrar for a breach of the code of conduct. This will allow for third parties or a non-party to an infraction to lay a complaint on the instruction of the person themselves. It is our experience as a rights protection organization that many individuals with a mental illness will not file a complaint due to fear of retribution or reprisal, or out of fear of being labelled and harassed by security personnel in the future. As such, they are not comfortable making a complaint, often due to the power imbalances that exist when challenging such authority. Instead, they simply walk away from the situation, even when there is a legitimate complaint to be made. The ability of non-parties to lay a complaint is a positive step, as this will allow support workers, families, advocates and other concerned citizens to do the right thing and bring forward a complaint about a rights violation or inappropriate treatment of an individual with a mental illness. Ultimately, this will heighten accountability.

Our office is also pleased that the act requires security guards, individuals and businesses to be insured. Such a requirement will increase the ability for individuals to be reimbursed for injury and civil claims, yet another accountability that protects all individuals in Ontario.

Subsection 35(1) of the act requires that security guards carry their licences and produce them on request. This provision is not strong enough, as it should also require that the person wear a name badge that is visible, so that those who come in contact with security personnel will know to whom they are speaking. Of course this would not be possible for those doing undercover work, but this provision should apply to everyone in uniform. Many of our clients would not ask for the names of security personnel or to see their licence out of fear or intimidation. However, if the name was visible, they would be able to make a complaint because they would know the name of the individual involved. Such a provision would also heighten accountability to all members of the public.

There is nothing more frightening for mental health consumers than the use of intimidation or force and being confined by individuals they do not know. At times, the mental illness they experience causes them to be afraid when confronted by individuals in uniform, causes them to be fearful for their safety, and potentially may trigger a fight-versus-flight, reaction. It is for this reason that no unregulated, non-medical staff should be empowered to use either force or intimidation in the discharge of their security function. They should be trained in least-intrusive methods for de-escalation and non-crisis intervention. It is our position that security personnel should provide service in a hands-free environment that reflects the principles of dignity and respect for the person. In high-risk situations, it may be more appropriate to involve police who have additional training, or use the services of a crisis intervention team or someone who specializes in work with individuals with mental illness when responding.

Moving on to specialized training for those who work in hospitals and mental health facilities or with other vulnerable populations—my remarks today are really directed at those security personnel who work in hospitals and mental health facilities and with vulnerable

populations. Although security personnel will provide services in a range of venues and with various populations, our office would like to recommend that those who will work in mental health environments and hospitals receive specialized training, given their contact with this vulnerable group that requires the use of special skills. Security personnel working with this specific population should be required to have a special designation that reflects their additional training and knowledge of mental health and legal issues. Given the specialized training that security personnel should receive, there may be issues related to compensation and their role as regulated professionals. We think that the training should include, but not be limited to, some of the following things: an understanding of mental illness; how to respond to individuals in crisis; sensitivity training regarding special needs for disadvantaged populations, including those with mental illness; an overview of mental health and patient rights in Ontario; non-violent crisis intervention training and certification; knowledge of de-escalation techniques; information regarding the use of seclusion and restraint in health care settings in Ontario; documentation standards for once intervention has occurred; understanding stigma and its consequences; and the principles of wellness and recovery.

To comment briefly on the code of conduct, our office thinks it's really important that this committee direct those who will be responsible for drafting the regulations to consult broadly with mental health consumers, families, advocates and service providers to ensure that the code of conduct is comprehensive and includes accountability mechanisms specific to the mental health population. We would also encourage the committee to put in a provision that requires the review of the code of conduct on a regular basis.

The last comments I want to make have to do with confidentiality. Confidentiality is one of the most important aspects of the health care field in Ontario and one that often gets overlooked by providers. Security personnel, in the course of their duties, may learn or become aware of very sensitive and private personal health information related to an individual's mental health. The act must specifically address the issue of maintaining confidentiality and the consequences of breaching it, unless it is an issue where there is a duty to warn or a requirement for mandatory reporting of abuse, which may require such a breach.

Due to the stigma and discrimination associated with mental health and mental illness, a breach of confidentiality can have devastating consequences on a person's employment, relationships, education or standing within their own community. Any inadvertent or unintended breach of confidentiality by security personnel must be disclosed to the person who is the subject of that disclosure. This will create transparency and accountability to the people who will come in contact with security personnel.

The Chair: Thank you very much for your deputation, Mr. Simpson. We'll now begin with Mr. Kormos. One minute each, please.

Mr. Kormos: I appreciate your addressing the issue of security personnel in a hospital and in mental health treatment recovery areas. But shouldn't we be confident that all security guards who are interacting with the public have some basic exposure to the phenomenon—I mean, a bad case of Tourette's can be pretty alarming to somebody who doesn't understand, but in and of itself, it's a relatively harmless condition, right?

Mr. Simpson: Right.

Mr. Kormos: So shouldn't a basic understanding of mental illness be a part of all security personnel training?

Mr. Simpson: I agree with you. I think that sort of training should be part of everybody's training. The statistics say that right now six million Canadians, or one in five of our population, have a mental illness, so the likelihood of somebody coming in contact with an individual with mental illness is very great. I think that if you've had that training and you can de-escalate things and work with people in a respectful manner, that serves everybody well. I would agree with you. I think that training should be open to all security—

The Chair: We'll move now to Ms. Sandals.

Mrs. Sandals: Thank you for your comments, sir. You've given quite an explicit list of training that would be useful for security personnel in mental health facilities. I'm wondering if, in your experience, those folks who are there now have training in some instances that covers all of this, some of this, none of this. What's the state of the world out there right now?

Mr. Simpson: I would say to you that I think most people who are working in a security role in a facility are receiving some training. Is it enough? Probably not. It would be great if it was included in the regulations that this is what's required in terms of training: a standard of practice, a standard of conduct. "Here's what we will expect from you in your role as professional security."

1420

I guess, for us, what's a little bit alarming—and we didn't talk about this bill from all security guards, because we just don't have the expertise to do that—

The Chair: Thank you, Mrs. Sandals and Mr. Simpson. I invite you to continue your comments after the next question. Mr. Arnott.

Mr. Arnott: I'd just like to give you the opportunity to continue to answer that question.

Mr. Simpson: I just want to say that I guess what we're alarmed about is we see more and more often that security personnel are doing things that look like something that a regulated health professional should be doing. They're present and putting on the rubber gloves when somebody's going to be secluded or restrained or forcibly injected. It's because of those things that we think there needs to be a clear role definition so that security personnel aren't doing things that a regulated health professional should be doing.

The Chair: Thank you, Mr. Simpson, on behalf of the Psychiatric Patient Advocate Office.

FANSHAWE COLLEGE

The Chair: I would invite our next presenter, Ms. Pam Skinner, dean of the faculty of health sciences and human services at Fanshawe College, the land of MPP Khalil Ramal, I understand.

Ms. Skinner and colleagues, I'd remind you that you have 15 minutes in which to present. Please begin.

Ms. Joy Warkentin: First of all, I'd like to tell you I'm not Pam Skinner. My name is Joy Warkentin, and I'm senior vice-president of academic at Fanshawe College. I'm representing Ms. Skinner today, and with me is Ray Pritchard, the coordinator of our law and security and police foundations programs.

Mr. Chair, I'd like to thank you and the committee members for giving me this opportunity to present at this public hearing. First of all, I'd like to say to you that we're quite supportive of this legislation. We think that establishing training standards and licensure requirements is an appropriate thing to do to enhance credibility of the workers and, as well, to enhance the safety of the public.

Programming in many of our programs is consistent with the principles of this legislation and we have a lot of experience in educating professionals to meet provincial and national standards, as well as licensure examinations and competency testing of various sorts. The standards for the police foundations and law and security programs, of course, were established provincially by the Ministry of Training. They're consistent across the province, and all of the colleges meet those standards in their educational programs.

If you look at the top of our presentation, you'll see our motto, which is "Community driven—student focused." I'm going to talk a little bit about that as I address this legislation.

Every community college program has an advisory committee, and that advisory committee is made up of employers, graduates in the field and educators. They give the program advice on how the curriculum should be structured on meeting the provincial standards. As well, every five years, they appoint a program review panel, which is external and evaluates the programs. They help us keep our programs relevant and current with legislation and standards.

The faculty of health sciences and human services also has a long history of participating in the accreditation of particular programs, and should that be a requirement under this legislation, we would be pleased to participate and assist in any way we can.

Colleges have long been a provider of education, training and evaluation. We've already been retooling our programs in anticipation of this legislation and have developed appropriate courses and programs.

Consistently, community college graduates demonstrate an ability to meet the outcomes of whatever their program of study, and those outcomes aren't static. They change, depending on the needs of employers, changes in legislation and the needs of clients. We pride ourselves on being nimble and responsive in being able to turn our programs on a dime. For example, if you look at the changes in the health care aide going to a personal support worker, colleges not only had to change their programs very quickly, but also develop bridging programs for people who were in existing employment to help them meet the new skills, as well as to be able to respond to the testing and competency requirements that would be established.

Presently, we're positioned to offer level 1 certification that's part of a community college diploma and, as well, we have programs in continuing education which offer level 2 certificates, such as the use of restraint and force.

I'm not going to go through all of this, because I know that you're able to read.

We have very appropriately credentialed faculty with relevant and accredited expertise. As well, we have expertise in on-line learning, in different kinds of opportunities for students and options for their learning, and in the support of disabled students and students with learning challenges. We feel that we're positioned to help people deal with the testing requirements that may be forced upon them, because we've had to do that with other students who have challenges in meeting those kinds of requirements.

Our programs are strong and well-regarded, and our graduates are credited with equivalent university course credits in a number of Canadian and international universities.

We feel that we're positioned to assist with the implementation of the training that will be required as a result of this bill, as are the other community colleges in Ontario.

We are somewhat surprised that to this date we haven't been involved in the discussions around this bill. We would really humbly request involvement as the regulations are developed and in the implementation phase. We are prepared to offer you our expertise and assistance and, as well, our support.

Thank you very much for this opportunity.

The Chair: Thank you very much. There's a generous amount of time for questions, beginning with the Liberal side.

Mrs. Sandals: I'm just sitting here thinking, what haven't I asked already?

Ms. Warkentin: I won't feel offended if you don't ask me anything.

Mrs. Sandals: One of the things that has come up is the issue of competency-based examination. Do you have any experience in any of your programs with doing that? Would you care to comment on the reality/possibility/use of competency-based examination?

Ms. Warkentin: We use competency-based examinations in a number of programs. Many of the college programs, of course, are applied and they're in some kind of practice setting, whether that would be nursing, welding, construction or dental hygiene. So we're used to competency exams where students have to demonstrate proficiency in a skill as well as knowledge. We do it all the time. It's pretty common, whether you measure how

far the instrument is going down a gum, whether you're doing it in a virtual reality situation or on a real client, whether it's skill in an apprenticeship or technology program, or whether it's in a health science or human service program where some of the skills are the use of self and you're trying to measure competency in those kinds of areas.

Mrs. Sandals: If you are dealing with health professionals or apprentices, you're probably dealing with relatively small numbers of people. Have you had any experience with competency-based examinations where you're dealing with a very large number of people?

Ms. Warkentin: In nursing, you're dealing with 120, so it's not small.

Mrs. Sandals: We're looking at 30,000 here, provincially.

Ms. Warkentin: If you're looking at doing large-base competency testing, you would have to design your test to meet the outcomes you're trying to measure, and then train people who would do the competency testing. Pick five or six proxies for whatever skills you're trying to test and you would test them. You could do it efficiently. It would take some thinking through of what you wanted the people to demonstrate. I would imagine it would consist of something verbal, something written and then some practice settings or role playing, something like that.

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh): I just want to say that I am from eastern Ontario and I have the city of Cornwall with St. Lawrence College. We do have police foundations and the law and security courses there. As a retired educator, I've watched a number of my former students go into the program and become employed.

I'm just wondering about your tracking of individuals. I'm wondering about these people who have gone into the course and out into security. We heard comments today about low wages and problems there. Do you track and do you have any idea of how these students fare in the long term? Do they go into police college and become—

Ms. Warkentin: We do track them. Six months after graduation they are surveyed. Subsequently, every time we do a program review we look at the last five years of graduates, where they're working and what kind of wages they're earning. We keep track of that.

I can't answer what they're earning, but Ray probably can.

Mr. Ray Pritchard: Right. In security, they start off at minimum wage, pretty well, and progress from there. Our program is set up so that first year there are articulation agreements with universities, so some will go into security and then eventually go back, get a university degree, and of course they're going to end up making more money. But at the start, yes, they are $9 or $10 an hour.

1430

The Chair: Thank you, Mr. Brownell. We'll move on now to Mr. Arnott.

Mr. Arnott: Thank you very much for voicing the opinion of Fanshawe College on this issue and this bill. You mentioned that you have some element of on-line learning available in this discipline. Can you explore that a little bit with us? How do you do that, and how much more can be done in the future?

Ms. Warkentin: Sure. We have on-line learning available in some respect or other in most of our courses. We have a platform called Desire to Learn, and at present we probably have 1,000 people signed up on any given day. They're able to access their notes and the work that the teacher puts on. It can go from a little bit of their program to doing their program totally on-line, depending on the field and what the student prefers. We're fortunate in that we have enough students that we can usually offer them some options. Some students will do it totally on-line; some students will do a hybrid, where they do a bit on-line and traditional; and some students will choose traditional. So we're quite fortunate.

Mr. Pritchard: Could I just add some comments? There is an ability to take just about all of the police foundations and law and security programs on-line. It's called OntarioLearn. We've already worked through the evaluation process. A student will do the on-line course and then go into a college to do the final examination in a setting where there is an invigilator. It has worked quite well.

The Chair: Thank you, Mr. Arnott. Mr. Kormos.

Mr. Kormos: Thank you, folks, for coming today. I'm not going to be parochial like some of my colleagues; I come from Niagara.

Ms. Warkentin: And Niagara College has a police foundations program.

Mr. Kormos: A real good one, yes.

Ms. Warkentin: Yes, it does.

Mr. Kormos: Look, they're all good; we know that. They've been part of raising the bar tremendously for police officers here in Ontario. The police officer who is hired today is a far different creature from the one who was hired 40 years ago—worlds apart.

We've had two perspectives here. One is a linear perspective: security personnel are to police officers as paramedics are to medical personnel. But we've had other people who have said that, no, these are two different streams. There are some of us on the committee who have concerns about privatized policing—the parapolicing movement—because we believe we have to reinforce public policing. My concern is that the community college seems to treat—and maybe they don't—portions of the police foundation law and security programs as security guard, security personnel and security staff programs. My concern, then, is that you are creating parapolice rather than security personnel. If you teach people how to use force, that implies they're going to use it, as compared to the police association and the Ontario Provincial Police Association, who say, "No. Call the cops." How accurate or fair is that observation?

Mr. Pritchard: Some of the courses we have within our program are designed to get around that very point. We have abnormal psychology, conflict resolution and

interpersonal group dynamics, all geared to talking with people and understanding what types of mental illness might be present. The use of force is downplayed within our program; however, because we're retooling and getting ready for Bill 159 to have royal assent, we are looking at bringing in the use of force.

Getting back to your exact question—what do we do?—we definitely try to tell our people, if they're in police foundations, that if they're looking at going that route, law and security, they're looking at becoming security personnel.

Mr. Kormos: Have I got more time?

The Chair: You do.

Mr. Kormos: It's hard, because—I heard your consideration of the low salary, the low wage, as, "Well, this is just entry level; people move on." But we've talked to people who are security personnel for whom this is their lifetime vocation: a woman we heard today, Ms. Charette; Mr. Caron last week in Toronto. These people are making less than $10 an hour—in Toronto, Lord love a duck. I understand why a police officer—well-paid, good career, good pension—is highly motivated, when he or she uses force, to do it by the book. They've got levels of supervision; they've got accountability up their noses. Again, they've got a lot at stake. When you're making $9 an hour and you're confronted with, let's say, a group of unruly kids, it seems to me that you've got a lot less at stake.

My plea to you is, how do we, in this process of raising the bar for that vocation, for that profession, impress upon people that if you pay nine bucks an hour, you're going to end up getting, sometimes, $9 an hour worth of service?

Ms. Warkentin: But when you raise the bar, put licensure in place and change the outcomes of programs to be more consistent, wages usually rise in response to that. That's been true in the change from health care aides to personal support workers. Salaries have gone up, and those are relatively low-paying jobs.

There will always be students who want to come into the college to take a one-year program or a three-semester program, and perhaps this legislation will require colleges to take a look at what they're doing and offer a different kind of program than is being offered presently. When legislation changes, we have to take a look at what we're doing.

Mr. Kormos: OK. There's this group on developing regulations that's been meeting through the summer. Community colleges aren't there—nobody from the community colleges.

Ms. Warkentin: Not to my knowledge. That was my point.

Mr. Kormos: That's nuts. That strikes me as just boneheaded. Thank you very much.

The Chair: Thank you, Mr. Kormos. Thank you, Mr. Pritchard and Ms. Warkentin from Fanshawe College, for your deputation.

UNIVERSITY OF WESTERN ONTARIO STUDENTS' COUNCIL

The Chair: I would now invite our last presenter of the day, Mr. Ryan Dunn, president of the student council at the University of Western Ontario. Welcome, Mr. Dunn. You have 15 minutes in which to make your presentation, and any time remaining will be distributed evenly amongst the parties afterward. Please begin.

Mr. Ryan Dunn: Thank you. I had no idea I was going last.

Bill 159 has a direct impact on colleges and universities across the province, mainly to do with the part-time employment we offer students in the areas that Bill 159 affects.

Primarily, the university environment is much different from other environments. I'm first going to put things in a UWO context and then go into a broader context. Then I'm going to make some recommendations you can follow, or not.

The university students' council hires 200 student employees annually, and we pay out $220,000 to these employees. UWO has an exceptional police force that supports our campus bars and our property supervisors as well.

Both our Western Watch, which would fall under clause 2(5)(a) of this bill, and our door staff, who would fall under clause 2(5)(b), are trained extensively. I have copies that I just received today, which I can leave with the committee for their pleasure. They are trained to monitor situations; however, they rely on campus police if something is dangerous or force is needed. I understand that the law cannot be changed for UWO alone, so I'll now put things into a broader context of student unions across the province.

The university environment differs from a downtown environment. Most college and campus bars are segregated. Most Ontario student unions employ students under both clause 2(5)(a) and clause 2(5)(b). The income helps to pay for the scholastic experience: books, tuition, rent, food. Understand that a lot of employees are part-time and that the turnover of part-time employees is very high. So requiring people to go through extensive training will incur costs to either the employees, who are students, or to the employer, and it would have to be repeated from year to year.

There is something to be said for the peer-to-peer nature of the security that goes on at colleges and universities. It's really important that we keep it that way—that we have students acting as door staff and students acting as property supervisors—because it allows people to act in a way that is safe and collegial and in a way that universities strive for.

I understand that this bill isn't trying to curtail such endeavours; it's just trying to ensure that people are properly trained. I understand that and think that's a reasonable request; however, I have a few requests on behalf of universities.

When writing the regulations, please allow that the costs are affordable for student unions. I don't know

what the proposed costs are. When talking to our head of campus police, he was estimating in the range of $800 or $900 to be certified. There's a high turnover and we employ many people, so the question is, who gets that cost? Students are already faced with costs for their education. It would be a shame if, in order for them to be employed through a university, they would have to pay more money.

As well, if you do write regulations, please make sure there is a course similar to Smart Serve. I think Smart Serve is a wonderful program, provided by the province of Ontario, which allows people to train at low cost, taking time into account as well. It basically gives people enough training so they can work and support themselves.

Thank you for hearing me. I look forward to your questions.

The Chair: We'll begin with Mr. Arnott.

Mr. Arnott: You made very good points, some that haven't been brought to the attention of the committee to this point. I want to thank you very much for coming in for your presentation. I think these are issues that have to be explored before the bill is brought back to the House and ultimately passed into law.

Mr. Kormos: Mr. Dunn, I don't know: I was a university student in the early 1970s. We didn't drink, and drugs were unheard of, so we didn't have these kinds of problems. This is all new for me.

Mr. Dunn: It's the same today.

Mr. Kormos: Yes; just in case your parents read the transcript. I understand.

This is a problem. It was raised during the course of the discussion because we're talking here about people who are effectively performing a mere watchperson role. In other words, "Here's the dorm. Sit here at the door and make sure that people who don't live in the dorm don't come in. But don't try to arrest anybody. Don't get into any physical altercations. If push comes to shove, you call the campus police." Is that the lay of the land?

Mr. Dunn: That's correct.

Mr. Kormos: This is the most benign sort of security, surely, that we want to accommodate. We've talked about house-sitting, for instance—people who hold themselves out to do house-sitting while somebody is on vacation. We've talked about a university student who might be hired over the summer, by a construction company that's doing work in a subdivision, to sit there in their little shack all night to make sure that nobody drives off with the two-by-fours. That goes on out there.

Do we really want to make these people undertake a course? It's caveat emptor for the employee. The employer knows that he or she can request a criminal record search that's going to cost $50 or $60 at your local police station. Is this the problem? I don't think it's the problem, folks. I don't think that anybody in the government anticipated this as the problem when the legislation was drafted.

It's not just on campus; it's off campus as well. Young people like this young man and his colleagues do this sort of work to finance their way through university and don't even consider themselves to be security guards.

Again, it seems to me that we have to find—you talk about two classes; that is not enough. This is the most benign, lowest level. It's like house-sitting; it's like monitoring the security panel at AlarmForce out of its central office and merely calling the police when the light flashes. Is there a need to regulate these people? I don't think so.

Mr. Dunn: Sir, may I add something else?

The Chair: Please go ahead.

Mr. Dunn: That's a perfectly valid point. If this bill is to pass, I know that our students' union in particular cannot afford the costs. We will now have to outsource these jobs to a professional security organization. That contravenes our mandate, which is to provide the students with the best experience possible, and part of that is student employment. You will be effectively eliminating student jobs across the province, and I think that is very wrong.

The Chair: Thank you, Mr. Kormos. To the government side.

Mrs. Sandals: I think in your comments I heard you include in your concerns the safe walk program, whatever you call it at UWO.

Mr. Dunn: It actually wasn't the safe walk program. Our foot patrol is volunteer, and it would be exempted.

Mrs. Sandals: That's what I was going to say: I was surprised.

Mr. Dunn: It's actually Western Watch, which are basically property supervisors. People would hire them. We're having our homecoming-float-building, and they leave the floats overnight, so what would happen is that people would hire the Western Watch students to oversee the floats overnight. We recently had a stage for our opening ceremonies for orientation week, and again Western Watch was hired to oversee the stage during the nighttime, when nobody was around.

Mrs. Sandals: OK. I understand, then, because I was confused about what you were talking about. So you're back to Mr. Kormos's scenario of watching the two-by-fours, in essence.

Mr. Dunn: Correct.

The Chair: Are there any further questions from the government side?

Mr. Kormos: Who's your MPP?

Mr. Dunn: My MPP is Deb Matthews.

Mr. Kormos: Make sure you talk to her.

Mr. Dunn: I will.

The Chair: Thank you, Ms. Sandals, and thank you as well, Mr. Dunn. On behalf of the committee, you're easily the youngest presenter we've had, so we wish you well, both in your capacity as president of the students' council and your own studies.

I'd remind committee members that the deadline for submitting amendments is Wednesday, September 28, at 5 p.m. This committee stands adjourned until Monday, October 3, for clause-by-clause consideration.

The committee adjourned at 1443.

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Président
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr. Michael A. Brown (Algoma–Manitoulin L)
Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)
Mr. Kevin Daniel Flynn (Oakville L)
Mr. Frank Klees (Oak Ridges PC)
Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)
Mr. Mario G. Racco (Thornhill L)
Mrs. Elizabeth Witmer (Kitchener–Waterloo PC)

Substitutions / Membres remplaçants
Mr. Ted Arnott (Waterloo–Wellington PC)
Mr. Garfield Dunlop (Simcoe North / Simcoe-Nord PC)
Mrs. Liz Sandals (Guelph–Wellington L)

Clerk / Greffier
Mr. Katch Koch

Staff / Personnel
Mr. Avrum Fenson, research officer,
Research and Information Services

CONTENTS

Thursday 22 September 2005

ISSN 1710-9442

Legislative Assembly of Ontario

First Intersession, 38th Parliament

Official Report of Debates (Hansard)

Monday 3 October 2005

Standing committee on justice policy

Private Security and Investigative Services Act, 2005

Chair: Shafiq Qaadri
Clerk: Katch Koch

Assemblée législative de l'Ontario

Première intersession, 38e législature

Journal des débats (Hansard)

Lundi 3 octobre 2005

Comité permanent de la justice

Loi de 2005 sur les services privés de sécurité et d'enquête

Président : Shafiq Qaadri
Greffier : Katch Koch

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Monday 3 October 2005

Lundi 3 octobre 2005

The committee met at 1003 in room 228.

PRIVATE SECURITY AND INVESTIGATIVE SERVICES ACT, 2005

LOI DE 2005 SUR LES SERVICES PRIVES DE SECURITE ET D'ENQUETE

Consideration of Bill 159, An Act to revise the Private Investigators and Security Guards Act and to make a consequential amendment to the Licence Appeal Tribunal Act, 1999 / Projet de loi 159, Loi révisant la Loi sur les enquêteurs privés et les gardiens et apportant une modification corrélative à la Loi de 1999 sur le Tribunal d'appel en matière de permis.

The Chair (Mr. Shafiq Qaadri): Good morning, ladies and gentlemen and members of the committee. I would now like to call the standing committee on justice policy to order to begin clause-by-clause consideration, as you're well aware, of Bill 159, An Act to revise the Private Investigators and Security Guards Act and to make a consequential amendment to the Licence Appeal Tribunal Act, 1999. The clerk has distributed the copies of various amendments received, which you are also no doubt in possession of. As well, I'd like to welcome on our collective behalf Mr. Ralph Armstrong, legislative counsel, who is here to assist us in our clause-by-clause consideration of this bill.

I would now put forward a question to the committee: Are there are any general comments, questions or amendments to any section of the bill and, if so, to which section? Mr. Kormos.

Mr. Peter Kormos (Niagara Centre): Thank you, Chair. I just want to make this observation: The concern—and I'm convinced it's a concern of everybody on the committee—is that this bill, once passed and once proclaimed, could have the effect of eliminating I'd say at least 50% of the existing security guard positions by virtue of the new licensing requirements. There have been, in the course of speaking with participants in the hearings, discussions about grandparenting and about creative forms of testing de facto currently licensed security guards.

When we last met, I recall very specifically indicating that it was important that this committee resolve those matters, in my view, before the bill is reported back to the House. I appreciate that a whole lot has been left to regulation and, while regrettable, it's not uncommon. I appreciate that the government has talked about two levels of security guard, although it seems to me that if in fact the government wanted to pursue a sophisticated regulatory scheme around security guards, there's room for far more than two levels, in view of the type of work that's contemplated being regulated. I'm cognizant in particular of amendment number 3, although for the life of me I'm not sure how it will assist us in addressing the issue of massive unemployment.

My position at this point is simply this: If a person has been licensed as a security guard and retains that licence—in other words, hasn't done anything by way of improper performance of their duties—that person should be entitled to the basic licence under the new regime. I accept that in all likelihood that would apply to the most passive form of security work, what we've talked about as being night watchperson type of security work or monitoring electronic surveillance equipment, where there is no interaction between that security person and the public, at least insofar as doing parapolicing, like arrests.

Ms. Sandals worked hard, in my view, trying to get a handle on the concept of alternative forms of testing, testing in terms of actual conduct as compared to written testing. We were told in a very casual way that that could be done with respect to 30,000-plus security guards across the province of Ontario in relatively short order. But I just find it remarkably hard to believe how that could be achieved with 30,000-plus security guards.

We had a couple of your basic, good, hard-working security personnel appear before us. Remember Mr. Caron here in Toronto and the folks down in London, who talked about their incredibly low wages and the fact that they weren't out there using security guard work as an interim job between academic background and policing, that they wanted to be security guards. They liked doing it and they felt that they were competent at it. In the case of Mr. Caron, he talked about taking all sorts of upgrading courses and so on. He didn't indicate how much utility he derived from them. As I say, I would dearly love to hear from the government an assurance that a licensed security guard, as of today, will have a level of licensing as a security guard once this bill is proclaimed.

The problem that was being addressed was the type of security personnel that has become far more prevalent, the privatized police, and I disagree ideologically with that. Rather than encouraging the growth of private po-

lice forces, we should be funding public police services. But at the same time, I acknowledge that, especially at the municipal level, scarce tax dollars are unlikely to increase in volume because of the utilization of the property tax base, an inherently unfair tax base.

The concern around the issue was the type of para-police that interact with the public in terms of effecting arrests and utilizing restraint, be it physical—we haven't really addressed the issue, or even whether this committee is interested in making decisions about whether or not any of the categories of security guard licences should permit the use of weapons, be they batons or firearms, or restraints like handcuffs, or I suppose any variation of handcuffs. But that was the type of security work that we were interested in.

It seems to me that nobody has ever expressed a concern or a problem around the passive security guard and his or her role in the workplace. Nobody has ever expressed a concern. Even the focus on criminal record searches—as I had occasion to note in response to one of the presenters in London, it's caveat emptor. Surely an employer is concerned, or should be, about whether or not a person he or she hires as a security guard has a criminal background. But quite frankly, they may be less concerned about a 15-year-old impaired driving charge than they are about an aggravated assault charge or the obvious and ever-frightening concern around people who are sexually aggressive pedophiles, among others.

1010

As I say, I would dearly love to have the government give me some level of comfort, but I am hard-pressed to want to see this sent back to the House unless there's some assurance given to those existing hard-working security guards that they're not going to find themselves out on the street. Oh, retesting, retesting, retesting. Let's be candid: It isn't the type of test that's of concern; it's the fact that they're being tested. You've got people who have—look, they based their lives on what the realities were at the time, and I just don't want to be a part of pulling the rug out from underneath them. I have great concerns about that.

The Chair: Are there any further general comments, questions?

Mr. Garfield Dunlop (Simcoe North): Just one very quick comment, Mr. Chair. I have a concern with the amount of work on this bill that will be done by regulation. I know that it's not the first time there's been a lot of regulation for bills to be sent to and approved by. But I'm curious; I'd like the government to respond at some time—maybe not now but at some point today, if possible. I'd like to know if the justice committee, or if there will be any type of hearing on the wording of the regulations that you bring forth, or will this just be done strictly by the ministry staff and implemented through the gazette process at a future date?

It was my hope anyhow that the Shand inquiry and a lot of the recommendations from that would have been addressed directly in this bill, and of course they're not. So if it's possible for the parliamentary assistant to respond as to whether or not the justice policy committee or any other body would get an opportunity to review the regulations and possibly even some type of hearing so that the people who had addressed the committee on the bill would actually be able to respond to the regulations as well. That's all I had, Mr. Chair.

The Chair: Are there any further general comments?

Mrs. Liz Sandals (Guelph–Wellington): Thank you, Mr. Dunlop and Mr. Kormos, for those comments.

In fact, if you look at the bill, it does address a majority of the recommendations made by the Shand inquiry. I'm pleased that you mentioned the Shand inquiry because, while clearly this was a topic where we haven't updated the rules since back in the mid-1960s, I think the Shand inquiry brought some focus to that.

What the Shand inquiry clearly pointed out in its recommendations is that there are a large number of people, perhaps numbering in the 20,000s, who are currently acting as private investigators, as private security, who are not licensed. There are another 30,000 people who are acting as private investigators or security guards who are working for a company that is licensed, but we really have no idea whether they have training that is appropriate or not.

What we heard from some of the folks who are acting as security guards currently, the people who came before us, is that they seem to have excellent training. We would encourage that and support it, and we appreciate the work that those folks have done, in many cases taking courses of their own volition to make sure that they had basic training and then went on to get further training in areas that interested them.

But what we also know is that there are literally thousands of people out there who are currently acting who have no training. As appealing as the practice of grandfathering is, we would be flying in the face of the Shand inquiry if we simply ignored that body of evidence which says that there are a large number of people out there who are currently operating with no training and that we need to get a handle on that.

In terms of the fact that there is a lot in regulation: Yes, there is. That is deliberate because in my past history, prior to becoming an MPP, I was subject to a lot of cases where governments tried to put everything in the legislation and did it badly.

There is a great advantage in putting the details, when they are as complex as they are with this issue, in regulation. That allows for two things. It allows for the people who are serving on the advisory committee—and a lot of the people we heard from are serving on the advisory committee, including, I believe, the Steelworkers' union. So it's not that the workers are unrepresented.

The people who actually have the expertise are working on the advisory committee and drafting the regulations, which I would suggest is far more appropriate than any of us MPPs sitting here trying to decide when you should use force or what uniform you should wear or who should do this or who should do that. I think it is much more appropriate that the experts work on the

advisory committee and negotiate with the registrar the details of those regulations. There is a place where the stakeholders in the industry are working on the details.

I think we will see, as this evolves, that we have the capacity to consult with the industry to get the details right, and over time, as the world unfolds, as it inevitably will, we will be able to update the regulations to make sure that they stay current and that we aren't back here in another 10 or 20 years, saying that this is totally out of date.

The Chair: Are there any further comments?

Mr. Kormos: I just want to note that the Hansard of the standing committee on justice policy of October 3, 2005, in the 10 a.m. sitting, should be preserved so that, in the event that Mrs. Sandals should be fortunate enough to sit as a member of the opposition here at Queen's Park and finds herself in a position where she is railing against the government of the day at its tendency and proclivity for using regulation as a means of writing legislation, government members of the committee can, at that time, quote back to Mrs. Sandals her very words on the Hansard from the standing committee on justice policy of October 3, 2005, in the 10 a.m. sitting, her passion and enthusiastic support for passing but shell or skeleton legislation and leaving the rest of it to a behind-the-scenes, behind-closed-doors regulatory process. Just a comment, Chair.

Again, I wish you well. You notice that I'm wishing you a sufficiently lengthy parliamentary career to enable you to sit in opposition so you'll enjoy the unique pleasure of having your words read back to you.

Mrs. Sandals: I thank you for your concern for my longevity.

Mr. Dunlop: So what I'm hearing from the parliamentary assistant is that there will not be an opportunity. Only those people who are fortunate enough to be on the advisory panel and who made deputations will be able to comment on the regulations; the others will not be. Is that what I'm hearing from you today?

Mrs. Sandals: My sense is that the advisory panel is being quite broad in terms of who it's talking to. So I think those who need to be heard will be heard.

The Chair: Any further comments, questions or issues? Hearing none, we'll now move to consideration of motions with respect to section 1. Are there any motions before the committee?

Mrs. Sandals: I move that the definition of "business entity" in section 1 of the bill be struck out and the following substituted:

"'business entity' includes a corporation, partnership or sole proprietorship; ('entreprise')".

If I may comment briefly, the purpose of this is to make sure that while the list of examples here are included in the definition of "business entity," one could take a broader view, and other forms, if they present, of business entities could be also considered. So this has the effect of slightly broadening the definition of business entity and make it more flexible.

The Chair: Is there any further debate?

Mr. Kormos: In fact, what it does is eliminate the definition of "business entity," because clearly—I mean, it's not rocket science. I don't dispute the need to reconsider it, because it is—what do they call it?—tautological. Yes. Because clearly those things that you speak of—corporations, partnerships, sole proprietorships—are by their very nature business entities, so to say "business entity" means "business entities" is tautological and of no value in terms of definition. What you've done is said "business entity," and by saying "includes," while fair enough, we knew that to begin with.

1020

So exactly what was it that you had in mind? Again, I'm not being suspicious; I'm just wondering what it was that you had in mind. At the end of the day, maybe we should just be eliminating this clause, this portion of part I, "business entity," because there are so many other parts of the act where you prefer to let the words speak for themselves. We talked about them. We talked about "bouncer." I'm not sure if you've included in your package of amendments a definition of the word "bouncer." We're relying on the common understanding of the word "bouncer," or a chucker-out, as I recall, speaking for itself.

You don't, for instance, in your amendment number 3, when you talk about guarding or patrolling—again, we're going to talk about that when we get to it. I think it's an interesting effort at trying to clean up the problems in the existing section, but you don't define "guarding" and "patrolling." You're going to let the common usage of the words be used to interpret what "guarding" means and what "patrolling" means. I'm wondering why you're even bothering with "business entity." Why don't you just leave it alone? Where "business entity" is in the act, it seems to me that it's a sufficiently clear bit of English, that it speaks for itself, and there's little served by saying "'business entity' includes." Of course it includes, but by simply saying "includes," you haven't defined "business entity" then. Do you understand what I'm saying? You haven't helped anybody reading the act that they wouldn't be able to do without having any definition of "business entity," because a business entity is a business entity.

Mrs. Sandals: I think Mr. Kormos and I are perhaps in agreement that what we have here is a definition of "business entity" that allows for a reasonable list of common usages but points out some of the more prominent usages.

Mr. Kormos: Is that for really stupid people who are reading the bill who wouldn't even begin to contemplate that "business entity" includes a corporation?

Mrs. Sandals: I would not want to comment on who might want to read the bill.

Mr. Kormos: Bless you, Ms. Sandals.

The Chair: Any further comments or questions?

Mr. Dunlop: I would agree somewhat with Mr. Kormos. If it includes a corporation, partnership or sole proprietorship, what else would it include? I'm curious what that would be.

Mrs. Sandals: For example, you could have a consortium of some sort, which might want to be a registered employer.

Mr. Dunlop: Why wouldn't we put that in there, then?

Mrs. Sandals: The point is that you could go on and on, so we've highlighted the number that are the most likely, but there are other possibilities, and we don't want to exclude them.

Mr. Kormos: I wonder if there's staff here who could help explain, because I'm ready to live with their answer. Is there any benefit to having this defined at all, as compared to merely saying "business entity"? The non-definition of saying "includes"—and I appreciate it's not really a non-definition, but in the first place, you identified "business entity" clearly; you didn't want to be restrictive. I understand that. But what's the value of defining "business entity" at all, rather than letting the common use, plain use, regular use of the words prevail?

The Chair: Ms. Sandals, I take it that we have government staff—

Mrs. Sandals: If that's acceptable, Mr. Chair, that would probably expedite it going back and forth between Mr. Kormos and I.

The Chair: That's fine. Welcome. Please identify yourself for Hansard and proceed.

Mr. Dudley Cordell: My name is Dudley Cordell. I'm a lawyer with the Ministry of Community Safety and Correctional Services.

I think the motion does contain a definition, that the words "corporation, partnership and sole proprietorship" give readers a sense of what the term is intended to mean. I also think that in the future there may be new types of corporate organizations that arise, and this gives a certain flexibility to the definition. That's my reason.

The Chair: Mr. Kormos.

Mr. Kormos: Sir, please don't go. Don't go. I agree with you. I understand what you're doing, and I'm not criticizing it. But we've got other areas of the bill where we've got interesting words like "bouncer" which are not the subject matter of a specific definition. That one is perhaps slang in its origins, but nonetheless, you know what a bouncer is. A bouncer's a bouncer. Why aren't drafters of legislation similarly capable of saying, "business entity," and that means business entity? Where are you from to not think that a corporation, partnership or sole proprietorship is a business entity? I suspect you're contemplating some of these weird and wonderful—lawyers, for instance. They've created the new non-liability lawyers' semi-corporations—

Mr. Cordell: Limited liability partnerships?

Mr. Kormos: Yes. You're contemplating stuff like this, new business entities, new types of corporate entities. I'm getting free advice from you. I want to learn. What value is there in defining it at all, as compared to merely letting "business entity" speak for itself?

Mr. Cordell: Well, first of all, I think that "business entity" is not as well known a definition as "bouncer." Second, we've given ourselves regulation-making authority to define what a "bouncer" is in case people find that it's not a well enough understood term. I think that given that business entities are subject to a whole bunch of regulation in this act, along with individual guards and private investigators, there is a good deal of merit in setting out this type of definition.

This is not unique to this type of legislation; it's quite common in legislation to create broad definitions of this type. This is not at all unusual.

Mr. Kormos: I agree. It's not unusual. I'm just wondering why we don't break the mould, liberate ourselves. Thank you kindly.

The Chair: Are there any further comments?

Mrs. Sandals: I think we should vote.

The Chair: Seeing none, we'll now proceed to the consideration of section 1 of the bill.

Mr. Kormos: No, sir.

Mrs. Sandals: We have to do this amendment, and then there's another amendment before we get to the whole section.

The Chair: Yes. All those in favour of this particular motion, government definition cited on page 1? All those opposed? I declare the motion carried.

Are there any further motions dealing with section 1?

Mrs. Sandals: I move that section 1 of the bill be amended by adding the following definition:

"'Minister' means the member of the executive council to whom the administration of this act is assigned under the Executive Council Act; ('ministre')".

This is simply put in to hang your hat on assigning who the minister is. The minister of our ministry has variously been called Solicitor General, public safety and community safety, so this just provides us with the flexibility to clarify which minister administers the act.

The Chair: Any further comments?

Mr. Kormos: I think it's an entirely appropriate amendment from the government's perspective, because who knows? With the bent that this government has, there could well be a ministry of privatized policing services as a companion to the ministry of privatized health and the ministry of privatized firefighting services. I think the government is covering its tail—

Mr. Dunlop: That's good.

Mr. Kormos: Well, think about it. The government is covering its tail in terms of being very specific. Here's an instance where, in my view, the definition is entirely appropriate and needed, especially with the privatization bent of this government.

Look at the P3 hospitals, Chair. They promised they wouldn't privatize hospital construction: promise broken.

The Chair: Is there any further debate on this particular motion?

Mr. Dunlop: I agree with the motion.

The Chair: Seeing no further debate, we'll now move to consideration. All those in favour of government definition motion 2 regarding section 1? All those opposed? I declare that motion carried.

We'll now proceed to consideration of that section. Shall section 1, as amended, carry? Any opposed? Carried.

We'll now proceed to consideration of the various motions for section 2. Are there any motions for section 2? Mrs. Sandals.

1030

Mrs. Sandals: I move that subsections 2(4) and (5) of the bill be struck out and the following substituted:

"Security Guards

"(4) A security guard is a person who performs work, for remuneration, that consists primarily of guarding or patrolling for the purpose of protecting persons or property.

"Same

"(5) Examples of the types of work referred to in subsection (4) include,

"(a) acting as a bouncer;

"(b) acting as a bodyguard; and

"(c) performing services to prevent the loss of property through theft or sabotage in an industrial, commercial, residential or retail environment."

What we have done here is actually taken what I think is the current practice in the old act, which is to move the reference to guarding or patrolling from the examples section back into subsection (4) to the actual definition of a security guard. We believe that for many of the people who have raised concerns that they might inadvertently have been included in the act, which wasn't the government's intention, this will clarify that when we talk about people who are security guards, we're talking about people who primarily guard or patrol. An example of where this was raised would be the issue of the night manager at a hotel, who does a whole lot of things all night, but certainly does not primarily guard and patrol. They primarily do a whole lot of other things.

The Chair: Is there any further debate or comments? Mr. Kormos.

Mr. Kormos: With respect to subsection (4), I understand what the government is trying to do and the problem it's trying to overcome. However, when you go down to subsection (5), in particular clause (c), I put to you that you have defeated your purpose. Just as "include" is not exhaustive of the types of functions that fall within the definition, it's exclusive, in terms of saying that notwithstanding subsection (4), if a person performs services to prevent the loss of property though theft or sabotage in an industrial, commercial, residential or retail environment, he or she is a security guard, notwithstanding that he or she may not do work that consists primarily of guarding or patrolling.

Do you understand what I'm saying? On the one hand, the broad definition says "guarding or patrolling," and I understand what you want to do: You want, then, to have the active, closer to parapolicing type of role, as compared to night watchperson. However, you go on to say that a bouncer who doesn't guard or patrol, but who is a bouncer by definition, is a security guard. You're categorically saying, "Examples of the types of work referred to in subsection (4) include ... acting as a bouncer...." Quite frankly, do bouncers guard or patrol? They guard and sometimes patrol, I suppose, but then that takes us to the person monitoring an electronic surveillance system, whose sole job is that when they see a red light go on saying that a door is ajar, they're to call the police or somebody else. They're not patrolling. Again, without a definition of what "guarding" means, because guarding has many connotations—our first and immediate sense of "guard" is a person who stands there, like the Wells Fargo guy with the money truck guarding the money. I'm not sure we don't have a problem.

My concern, though, is, "Examples of the types of work referred to in subsection (4) include...." So you have this broad, general definition in subsection 2(4), and you say, but in any event, "acting as a bouncer" puts you in subsection (4); "acting as a bodyguard" puts you in subsection 2(4); and "(c) performing services to prevent the loss...."

So I'm concerned that you've still got the guy up on the 22nd floor who's the security expert, who designs security systems, whether they're paper systems internally within the corporation—the farthest thing in the world from what we're thinking about as a security guard and the sorts of things that we heard when we talked to the banking people. They were here, and we talked to the insurance people about these internal loss-prevention programs, where they're building the systems, not doing the actual hands-on checking of your lunch bucket when you leave the plant to make sure you didn't take a crescent wrench out with you or a set of snap ring pliers or what have you.

I see what you've done, but I'm worried that by not similarly applying that qualification to subsection 2(5)—it seems that if subsection 2(5) were simply eliminated and these roles, "bouncer," "bodyguard"—because they're undefined, so we rely on, I guess, whatever it is that you call it, the plain English use of the words or the plain understanding. It's clause (c) "performing services to prevent the loss of property...." I applaud what you've tried to do with subsection 2(4), but by retaining clause 2(5)(c), it seems to me that you include a whole broad range of people who we didn't want to include, people doing the high-level security systems design. It's just a question.

The Chair: Thank you, Mr. Kormos. Any further comments?

Mrs. Sandals: Yes, just in response, this subsection 2(5) does not say "notwithstanding" or "except" or "in opposition to" or "in difference to." Therefore I believe it should be read as an "and," so that it's, "A security guard is a person who performs work, for remuneration, that consists primarily of guarding or patrolling for the purpose of protecting persons or property," and that includes "performing services to prevent the loss of property."

So if you're talking about somebody who guards and patrols "for the purpose of protecting persons or property," this merely clarifies that this would include people who are doing this "in an industrial, commercial, resi-

dential or retail environment." It doesn't set up a "notwithstanding."

I must note on the bouncer issue that I thought you read a wonderfully clear definition of "bouncer" from the Oxford English Dictionary into Hansard the other day, which captured exactly who bouncers are. I would suggest to you that bouncers are also not a "notwithstanding," because I think bouncers, within that definition that you read the other day, do in fact guard for the purpose of protecting the persons and property within the bar. When it is clear that the persons and property within the bar are perhaps in some danger, then they get into their chucker-outer role.

The Chair: Thank you for the comments.

Mr. Kormos: That's the whole point. I have no concern about the plain English interpretation of the words, which is why you don't define them. The problem is that you didn't agree with that when it came down to "business entity." Now you're suggesting that that's the case when it comes to "bouncer."

Look, we've still got a problem, though, because clearly, by including bouncer and bodyguard, you're making sure that those roles are covered under the act, even if they don't otherwise fall within the act by virtue of definition. That's your purpose in putting them in there. It isn't to be illustrative. You wanted to make sure that you captured bouncers and bodyguards. You didn't want somebody to be able to raise an argument saying "But he or she is only a bouncer, and therefore not subject to the rules." I understand that.

That's why you put "include" in here. The purpose of "include" in this application is not so much to be illustrative as it is to make sure that certain types of jobs are necessarily included, even though, if the definition in subsection 2(4) alone were applied, there would be some doubt or there could be argument. You want to avoid any argument as to whether or not bouncers are included. That's why you say "includes." You didn't put it there to be illustrative, as you did in "'business entity' includes" as compared to "means," and I understand why you included bouncer and why you included bodyguard. You're including bodyguard because you wouldn't have to say "includes bodyguard" if the subsection (4) definition automatically and irresistibly and without any possible debate included bodyguards. There would be no need to put "includes bodyguards." There would be no need to put "includes bouncer."

1040

But the problem is paragraph (c). I hear what you're saying. With respect, I disagree with you in terms of how this statute is going to be interpreted, or at least how it's going to be argued. Far be it from me to say how it's going to be interpreted, because that's up to—in this case, I suppose it would be a justice of the peace ruling, who range from very good to very bad in the province of Ontario because of the political patronage that has prevailed in appointments of justices of the peace, as compared to meritocracy.

You do what you want, but I think you're risking spreading out a net, because there would be no need for clause (c) at all. As a matter of fact, I'm going to move an amendment to the amendment. Kormos moves that paragraph (c) of subsection (5) of government motion number 3 be deleted. I've written that down here for the clerk. I know that's not the most accurate language to use, but I think it sufficiently identifies the issue here. If I may speak to that amendment now.

The Chair: The committee has before it a motion from Mr. Kormos, an amendment to the amendment. He moves paragraph (c) of subsection (5) of government motion number 3 be deleted. We'll now proceed to consideration of this particular amendment motion.

Mr. Kormos: There's supposed to be two Ss there in front of "subsection (5)". My hurried writing.

Look, you don't need subsection (5) any more because presumably "guarding or patrolling for the purpose of protecting persons or property"—forget about the "performing services," but "for the purpose of protecting persons or property" surely means to "prevent the loss of property through theft or sabotage in an industrial, commercial, residential or retail environment." The only thing that's different is "performing services to," which would make this distinguishable from "guarding or patrolling;" in other words, services above and beyond guarding or patrolling or as distinct from guarding or patrolling.

I'm just trying to err on the side of caution, and I'm going to leave it at that. I'm not going to belabour the point. I am asking for a recorded vote. I want to protect the in-house security, the wizards at the computer panels who design systems, people who do that kind of internal work that we don't contemplate and I don't think we ever did contemplate regulating. People in corporations and private persons are entitled to hire the best computer geeks they can find, by all means, but we surely don't want to regulate those people as security guards. I don't think so. That's why I'm seeking the support for this amendment to your amendment, Ms. Sandals.

The Chair: Is there any further debate or consideration on the amendment to the amendment?

Mrs. Sandals: Yes. I will not be supporting the move to delete because I think it's quite clear that what we're saying here is that a security guard, if you take subsections (4) and (5) together, is a person who is primarily "guarding or patrolling for the purpose of protecting persons or property," and that includes people who are guarding or patrolling in order to "prevent the loss of property through theft or sabotage" in those various settings that are enumerated. So I think that's quite clear and not open to misinterpretation. It will not be justices of the peace who will be dealing with the issue of who needs a licence. I would think it would be the registrar who would be dealing with the issue of who needs the licence.

The Chair: Any further comment?

Mr. Kormos: That warrants some clarification. Surely prosecutions under this act are going to be done under the Provincial Offences Act, aren't they?

Mrs. Sandals: Yes.

Mr. Kormos: Where I come from, it's JPs who hear those, and the occasional provincial judge, if they can swing it. It's sometimes a very busy court because of the chronic understaffing and under-resourcing of our criminal justice system. There is an inadequate level of staffing at the Ministry of the Attorney General, a serious need for yet more appointments to the bench and scarce crown resources.

The Chair: Is there any further consideration on this NDP motion, which we're designating as motion 3(a)?

Mr. Kormos: Recorded vote.

The Chair: A recorded vote on the NDP amendment to the amendment, designated as 3(a).

Ayes

Dunlop, Kormos.

Nays

Brown, Brownell, Delaney, Sandals.

The Chair: I declare the amendment to the amendment defeated.

We'll now move again to consideration and further debate on government motion 3. Is there any further debate?

Mr. Kormos: I'm going to make it clear that I'm unable to support this amendment because of the inclusion of paragraph (c) and, frankly, the inclusion of "bouncer," which is undefined in the bill, which leaves it with the OED definition, if that's the definition the court chooses to apply as compared to Webster's or whatever. So I won't be supporting this amendment.

The Chair: Is there any further consideration or debate on government motion 3?

Mr. Kormos: A recorded vote, please.

The Chair: We'll now move to the consideration.

Ayes

Brown, Brownell, Delaney, Sandals.

Nays

Dunlop, Kormos.

The Chair: I declare motion 3 carried.

Are there any further motions referring to section 2?

Mrs. Sandals: I move that clauses 2(7)(d) and (e) of the bill be struck out and the following substituted:

"(d) insurance adjusters licensed under the Insurance Act while acting in that capacity, and their employees while acting in the usual and regular scope of their employment;

"(e) insurance companies licensed under the Insurance Act and their employees while acting in the usual and regular scope of their employment;"

This simply clarifies that when we look at the exemption for the insurance industry, we are including the employees of the licensed insurance companies. It was not our intent to accidentally catch them up as requiring licenses.

The Chair: Is there any debate or consideration on government motion 4?

Mr. Kormos: As I understand it, this is simply a grammatical exercise. Because of the way that the language was structured, it could give rise to misinterpretation. Is that correct?

Mrs. Sandals: We love to be clear.

Mr. Kormos: For once. I'm so pleased to support you, Ms. Sandals, in this unique effort at clarity on the government's part.

The Chair: Is there any further debate on this particular government motion 4? Seeing none, we'll now proceed to the vote. All those in favour of government motion 4? Any opposed? I declare that motion carried.

Are there any further motions regarding section 2?

Mrs. Sandals: I would like to make a motion to add a new subsection. I move that section 2 of the bill be amended by adding the following subsection:

"'Peace officer'

"(9) For the purpose of clause (7)(c),

"'peace officer' means a person or a member of a class of persons set out in the definition of 'peace officer" in section 2 of the Criminal Code (Canada)."

As we heard from our previous hearings, there was some concern around just what we meant by peace officer, and we're clarifying that in fact it is in the Criminal Code, and that people cannot willy-nilly add to the definition of peace officer, that we do in fact mean the Criminal Code definition.

1050

The Chair: Any further consideration of government motion 5?

Mr. Kormos: Could we get the definition of "peace officer" in section 2 read for us?

Mrs. Sandals: I don't have it here, but I could at least give you a list of the major people who are included within that definition, if that would be helpful.

Mr. Kormos: I've got a Criminal Code in the office.

Mrs. Sandals: Pardon?

Mr. Kormos: I've got a Criminal Code in the office. I keep one with me at all times.

Mrs. Sandals: In case of need?

Mr. Kormos: Some people carry a Bible. I carry the Criminal Code.

Mrs. Sandals: Hey, look at this.

Mr. Cordell: I'm reading from an e-mail I sent, not directly from the Code, but I just basically cut and pasted off the Web site. So to the extent that the federal Web site is up to date or not up to date, this is the version that's on their Web site:

"'peace officer' includes

"(a) a mayor, warden, reeve, sheriff, deputy sheriff, sheriff's officer and justice of the peace,

"(b) a member of the Correctional Service of Canada who is designated as a peace officer pursuant to part I of the Corrections and Conditional Release Act, and a warden, deputy warden, instructor, keeper, jailer, guard and any other officer or permanent employee of a prison other than a penitentiary as defined in part I of the Corrections and Conditional Release Act,

"(c) a police officer, police constable, bailiff, constable, or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process,

"(d) an officer or a person having the powers of a customs or excise officer when performing any duty in the administration of the Customs Act, the Excise Act or the Excise Act, 2001,

"(e) a person designated as a fishery guardian under the Fisheries Act when performing any duties or functions under that act and a person designated as a fishery officer under the Fisheries Act when performing any duties or functions under that act or the Coastal Fisheries Protection Act,

"(f) the pilot in command of an aircraft

"(i) registered in Canada under regulations made under the Aeronautics Act, or

"(ii) leased without crew and operated by a person who is qualified under regulations made under the Aeronautics Act to be registered as owner of an aircraft registered in Canada under those regulations,

"while the aircraft is in flight, and

"(g) officers and non-commissioned members of the Canadian Forces who are

"(i) appointed for the purposes of section 156 of the National Defence Act, or

"(ii) employed on duties that the Governor in Council, in regulations made under the National Defence Act for the purposes of this paragraph, has prescribed to be of such a kind as to necessitate that the officers and non-commissioned members performing them have the powers of peace officers;"

The Chair: Thank you, Mr. Cordell, for the definition of "peace officer." Is there further debate?

Mr. Kormos: Thank you very much. I appreciate that. I should have had that and I didn't.

The Criminal Code definition, then, uses the language "includes," as you will recall. Your definition is interesting because it says "means," and "means" applies only to the list of persons enumerated in the "includes." So even though the Criminal Code is a little more open-ended—think about it: Is this where the Criminal Code is a little more open-ended because it says "includes"? You're exhaustive.

Let's put it this way: Had you wanted to use the Criminal Code definition of "peace officer" in section 2 of the code—but you had also wanted to throw in "building inspectors"—you would amend this by having your definition, "'peace officer' means a class of persons set out in the definition of 'peace officer' in section 2 of the Criminal Code, and includes a municipal building inspector." You understand what I'm saying?

So even though a municipal building inspector wasn't a peace officer within the definition of "peace officer" under section 2 of the Criminal Code, you could make him or her a peace officer for your purposes by saying "and includes," just as earlier on in this section you argued for a definition of "security guard" that said includes bouncer, bodyguard, and "performing services to prevent the loss of property" etc. Clearly, you don't want to include any other people than what are included—not just included, but contained—in the list of included parties in the section 2 definition in the Criminal Code of "peace officer." God bless.

Mrs. Sandals: And that would be precisely why we wrote it the way we wrote it. Thank you for that explanation.

Mr. Kormos: You're welcome. Quite right, because you could have added more.

Mrs. Sandals: Because we did not wish to include building inspectors etc. to our list.

Mr. Kormos: Earlier you did want to include bouncers, bodyguards and persons "performing services to prevent the loss of property." I appreciate it. I just want to make sure we've got the distinction here, so we understand that somebody who reads this down the road understands what is going on here. I want them to be very, very clear.

I'm going to support your amendment, because I think it's a healthy first start.

The Chair: Mr. Dunlop?

Mr. Dunlop: Just a clarification, and maybe the parliamentary assistant, Ms. Sandals, can help me with this. Why would this definition not be included right in the original definitions at the beginning? Why would you add a subsection (9)? Why would it not be defined at the very beginning under "Definitions"?

Mrs. Sandals: I'm not sure it's a big deal, but it's put in the section where it's relevant.

Mr. Dunlop: I just felt it would be the proper way to do it. Maybe there's a reason that I'm not aware of. I'll support it. I'm not against it. I'm just wondering why it wouldn't be in the original definitions.

Mr. Kormos: That's a good point.

Mrs. Sandals: But not one worth debating.

Mr. Kormos: Well, hold on.

Mr. Ralph Armstrong: May I speak?

The Chair: Please, legislative counsel.

Mr. Armstrong: Ralph Armstrong, legislative counsel office. As a drafter, you do all kinds of things. Some things strike you one way, some of them strike you another. My recollection is that "peace officer" does not appear in this bill in any other place, so there was a certain merit in putting it right in that one section, close by. You can read along, see it, and not see it at the beginning and expect it to pop up a bunch of times. This is done this way in a bunch of acts. In other acts, it only appears once; you only use it in the definition section at the beginning.

If you're asking me if I have a big book where it appears that it has to be done this way, no, I don't, sir. It's what I do.

The Chair: Thank you, Mr. Armstrong, for that clarification.

Mr. Kormos: Drafting legislation has got to be one of the most remarkable and challenging things that human beings do. It will never be computerized, for the reasons you just said. So if that's what Mr. Armstrong says is the case, if it's a matter of the signature of the legislative counsel being contained in that bill in terms of his or her style and preference and just what feels good or what seems right—it's like the English language, I suppose, where there are certain things that are more appropriate than others, not because it's written in a book somewhere but simply because it flows better, it makes more sense—at the end of the day, sounds good to me.

Mr. Armstrong: If I may take the liberty of thanking the members on behalf of my office, I would like to take it. Thank you.

The Chair: Thank you, Mr. Armstrong.

Is there any further debate or commentary on government motion 5? Seeing none, we'll now proceed to the vote. All those in favour of government motion 5? All those opposed? Seeing none, the motion carries.

Shall section 2—

Mr. Kormos: Chair—

The Chair: Yes, Mr. Kormos.

Mr. Kormos: Now we get to debate section 2, as amended.

The Chair: Yes, we now proceed to the debate and consideration of section 2, as amended.

Mr. Kormos: I will not be supporting section 2. It is key, clearly, to the bill. I continue to have grave concerns about the failure of amendment number 3 to achieve the goal that I had originally hoped the government had. I believe, particularly in the definitions around "security guard" in subsections (4) and (5), that there remains far too much ambiguity, with the risk of including people in the bill we have no business including. I won't be supporting it, and I'll be calling for a recorded vote.

1100

The Chair: Is there any further debate or consideration on section 2, as amended? Seeing none, we'll now proceed to the vote. Shall section 2, as amended, carry?

Ayes

Brown, Brownell, Delaney, Sandals.

Nays

Dunlop, Kormos.

The Chair: I declare section 2, as amended, carried.

We'll now proceed to consideration of section 3. Are there any motions before the committee with reference to section 3? Mr. Kormos?

Mr. Kormos: I'm sorry, there are no motions on my behalf, and I might have jumped the gun because somebody else may have an impromptu, unfiled one.

The Chair: Are there any motions before the committee for section 3? Seeing none, we will debate section 3.

Mr. Kormos: I'd appreciate a little bit of background. You talk about the appointment of a registrar of private investigators and security guards. The current registry system for security guards, the licensing system, falls under whom?

Mrs. Sandals: Sorry, what do you mean by "whom"? It falls under the Ministry of Community Safety and Correctional Services, and we currently have a registrar appointed. I don't believe this changes anything. This just represents a continuation of the current governance scheme. Is that what you were asking?

Mr. Kormos: I just wanted to know if this was an additional—

Mrs. Sandals: This is the current situation. This was to be inherited from the existing situation.

Mr. Kormos: This is the existing patronage structure, rather than a new one.

Mrs. Sandals: Exactly.

The Chair: Is there any further debate on section 3? Seeing none, we'll now move to the consideration and vote on section 3. All those in favour of section 3? All those opposed? I declare this section carried.

We'll now move to consideration of section 4. Are there any motions before the committee?

Mr. Dunlop: I move that section 4 of the bill be amended by adding the following subsection:

"Training required

"(2) No licence shall be issued unless the registrar is satisfied that the applicant has passed the prescribed examinations or has attained the prescribed standards of a level of training appropriate to the class of licence being applied for."

I thought, based on the Shand inquiry and the recommendations there, that something should be added around this concerning training, and I'd ask the committee to support this.

The Chair: Is there any further debate or consideration on PC motion 6?

Mrs. Sandals: While intuitively this is certainly the intent, which is that one requires appropriate training and appropriate examination, and we have no argument with that intent, we're a little bit concerned that the passing of this motion might have an unintended consequence, which is an interpretation that if you take the training and if you pass the exam, you would be automatically entitled to a licence. If you look over at section 13 of the bill, there is quite an extensive list of reasons for which the registrar may refuse to grant a licence based on, I guess, what you could encapsulate as possibly unsavoury history if the applicant happens to fall into a number of a categories. We would be very concerned by putting that reference in section 4, where all you're doing is listing the major types of licences and then going on and saying starkly that there's an implication that if you've got the

exam under control, then you're entitled to a licence, when in fact that's not the intent at all. Certainly, the training and examination are a precondition of the licence, but they are not the only conditions for a licence. We're a little bit concerned about reading that in isolation and what might be read into it.

While we certainly agree that the intent of the whole act is to ensure that people have appropriate training, appropriate skills as approved by the test, we don't want to accidentally, as it were, undo that.

Mr. Dunlop: Simply, I felt that this should be flagged early—very similar to the thoughts that legislative counsel had brought up earlier when he talked about one-timing it. I felt it was important here to at least identify the fact that the list of people being issued a licence should have some kind of training, and I thought it would be nice to have that under legislation. I don't think it eliminates the fact that any unsavoury characters could actually be disqualified later on under section 13, but I felt it was the proper thing to do and I'll be asking for a recorded vote on it.

The Vice-Chair (Mr. Bob Delaney): Any further comments?

Mrs. Sandals: Sorry. I'm just trying to find—because this is in a sort of weird place. If you look at the mandatory requirements under subclause 10(1)(b)(iii), it says, "the person has successfully completed all prescribed training and testing." So if I can go back and read the preamble and jump to the end, when you put it together:

"No person is eligible to hold a licence under this act unless,

"(iii) the person has successfully completed all prescribed training and testing."

We're not arguing the intent of what you're saying there. We agree with it and would argue that that's already covered in the act.

Mr. Dunlop: Are you saying that would be dependent upon the registrar under section 10?

Mrs. Sandals: No, because it says under "Mandatory requirements" that "No person is eligible to hold a licence unless ... the person has successfully completed all prescribed training and testing," which is what you're asking for. It then goes on. If you look at section 11, it talks about application. In section 12 it talks about—I've lost section 12. Somewhere there's got to be a little heading here—rules for getting your licence. But in particular, when you go into section 13, it then has the expanded "Registrar may decline."

It does not give the registrar, in my read at least, the authority to waive testing, which is, I think, what you're getting at. The authority of the registrar is to expand the exclusions, which is that even if you completed the testing, if you don't have a clean criminal record, if you've got some unsavoury connections as laid out in section 13, the registrar may go beyond requiring the training and testing. I think that's what you're trying to achieve here, which is that the act requires that the training and testing are mandatory.

Now it does go on to say at one point in the act that if you are currently employed as a guard, you can go direct to testing; if you've already got the training, you can go direct to testing; if you're already an employee, you can go direct to testing. So the circumstances where you can go direct to testing, minus the training, is laid out in the act, but the act does not give the registrar the authority to say, "You have to have a test" and "You don't have to have a test."

So I think your intent here is already well covered. I think we're agreeing in terms of intent; we're just arguing about how you get at the wording. We believe the wording is already there.

1110

The Vice-Chair : Comments? Mr. Kormos.

Mr. Kormos: Yes. Staff here might help. I appreciate and I support the intent of the amendment. The language, "unless the registrar is satisfied," as compared to the absolute language of section 10, or as compared to "a licence shall issue" when these conditions are met—does using or incorporating the word "satisfied" limit anybody's redress in that it gives the registrar more discretion than a mandatory provision; in other words, "a licence shall issue if" or "no person shall hold a licence unless"? Those are absolute; there's no ambiguity.

When you use language like "unless the registrar is satisfied," does that give more power to the registrar in the same way, for instance, that you're more inclined to appeal from an administrative process—you have a capacity to appeal a misinterpretation of law but not a finding of fact, if I've got that right?

The Vice-Chair: Comments?

Mr. Kormos: Is there anything special about the word "satisfied"?

The Vice-Chair: Shall we vote on the proposed—

Mr. Dunlop: Can I, Mr. Chair?

The Vice-Chair: Mr. Dunlop.

Mr. Dunlop: I'm curious. Will the registrar not be the only person issuing a licence?

Mrs. Sandals: By definition in law, I think the licence is issued by the registrar. I presume that on the card which the security guard was showing us in London it's got the registrar's signature. So, in law, the registrar issues the licence.

Mr. Dunlop: I know you're not going to support it. I just thought that my motion strengthened the whole section. If you're not happy with it, don't worry about it.

The Vice-Chair: Further comments?

Shall the proposed amendment to subsection 4(2) carry? Those in favour? Opposed? I declare the amendment lost.

Shall section 4 carry?

Mr. Kormos: One moment.

The Vice-Chair: Mr. Kormos, are there any comments on section 4?

Mr. Kormos: I don't have a quarrel with section 4 in and of itself, but for the fact that this was an opportunity for the government in its legislation to indicate that clearly there were going to be specific licences for

specific roles being performed by security guards, with an acknowledgement of the incredible variety of roles that security guards play. I'm not just talking about the two-tiered or three-tiered regulatory licensing system.

It's regrettable; that's all I'm saying. I'm not going to vote against the section, but it's regrettable that this section wasn't used as an opportunity to demonstrate the wide range of work that's being performed: the role of a bouncer being far different from the role of a retail floorwalker; far different from the role of an industrial security guard who has to familiarize, or should familiarize, himself or herself with all of the potential dangers in an industrial setting; and far different from the parapolice hired to work in gated communities or in business improvement areas.

This could have been an opportunity to do that; it doesn't. And, again, I'll be addressing the failure of the bill to identify those different roles as we get closer to the end.

The Chair: Any further debate on section 4?

Mrs. Sandals: Simply to point out that in section 54, governing regulations, the very first regulatory authority is to make regulations "prescribing classes of licences," then going on to make sure that the training and testing requirements for those classes of licences obviously do those distinctions. So there is certainly within the bill the regulatory authority to do exactly what you want.

The Chair: Any further consideration or debate on section 4? Seeing none, we'll now proceed to the vote. Shall section 4 carry? All those opposed? I declare section 4 carried.

Mr. Kormos: Chair, if I may, I am satisfied that sections 5, 6, 7 and 8 can be dealt with as a block.

The Chair: Thank you, Mr. Kormos. If that is the committee's will, we will consider sections 5, 6, 7 and 8 as a block. Is there any debate or consideration of those particular sections? Seeing none, we'll proceed to the vote. Shall sections 5, 6, 7 and 8 carry? Any opposed? Seeing none, I declare sections 5, 6, 7 and 8 carried.

We'll now move to consideration of section 9. Are there any motions before the committee?

Mrs. Sandals: I move that section 9 of the bill be amended by adding the following subsection:

"Protected witnesses

"(2) No person who holds a licence to act as a private investigator or security guard shall act or hold himself, herself or itself as being available to act with respect to,

"(a) locating a person known or suspected by the licensee to be a member of a witness protection program; or

"(b) gathering information about any person known or suspected by the licensee to be a member of a witness protection program for the purpose of enabling the person to be located."

I think that it's relatively obvious from the language that is used here that, at the moment, there is no prohibition that prevents someone from hiring a private investigator to try and find somebody who is the subject of a witness protection program. The intent of this is to say, "Yes, we have licensed you as a private investigator; yes, we have licensed you as a security guard, but the authority within that licence does not extend to doing investigative work that would lead to the interference with the protection of that witness," so that we are not licensing private investigators in particular to, in the vernacular, track down people who are under a witness protection program.

Mr. Kormos: You can't help but be sympathetic to the amendment, and it's an interesting one. You say that there has never been a statute, that there's never been a prohibition on licensed private—we have so little information about private investigators. There just seems to be no interest whatsoever from that community in the proposed statute. I assume this because there's probably, from their perspective, not going to be a whole lot of difference in the standards that they have to adhere to. I'm only assuming that, because there was no interest whatsoever.

Again, I don't know how big that industry is. I have no idea. In the old days, before no-fault divorces, these guys were photographers down in the motel strip by the lake there, the lakeshore. That was before most people's times here.

Why are we taking it upon ourselves to build a prohibition that, I agree, has as its goal the protection of people in witness protection programs? That's the operative word: "protection."

First of all, in Ontario—and this only came about when Chief Blair and the Attorney General had a press conference a few weeks ago. In the press conference, they got questioned about exactly what Ontario's witness protection program is. It wasn't quite like the television stuff you see. It wasn't quite like the federal witness protection program with new identities, and I'm paraphrasing. It seemed more like a bus ticket to Kingston and a voucher for $50 at the local Wal-Mart. That's the extent to which Ontario does witness protection programs. We don't have a new identify sort of stuff—new driver's licence, the American John Gotti mafia—what was the movie? Goodfellas, right? He was in the witness protection program. That sort of thing: the relocation and all that stuff. We just don't have that provincially.

1120

I know we have that structure being conducted federally. Why are we taking it upon ourselves? If there's to be legislation, surely it should be broader legislation saying that it is an offence to attempt to track down or identify a witness protection witness. It could be just that we're seizing the opportunity to, in this instance, make sure that security guards and private investigators don't do it. But has this been looked at from a broader perspective, in terms of—we're not, for instance, forbidding journalists. I'd put a good journalist up against a private investigator any day of the week. We're not excluding bikers from doing it—Hell's Angels types. A computer-savvy Hell's Angels type is as capable of doing that as any private investigator because it seems that there are very few secrets nowadays.

Are there other prohibitions? Are other people prohibited from doing this? And why are we doing it in this bill? Or is it as simple as saying, "We're seizing the opportunity to at least create a penalty for private investigators doing it"?

Mrs. Sandals: If I may respond, first of all, the provincial witness protection program does in fact include issuing new identities and new driver's licences, so it would be similar to the federal program in terms of new identities. But that aside, this would obviously apply to people under the federal or provincial witness protection program because we haven't distinguished. So just to deal with that.

In terms of other prohibitions, I'm not an expert on acts regarding journalists, but I'm not sure we have the journalists' licensing act; we do have before us the private investigator licensing act, so we're dealing with private investigators and security guards.

The Chair: Are there any further comments?

Mr. Dunlop: I'm curious about this part, though. To the parliamentary assistant, Ms. Sandals: What you're saying is that a licensed private investigator cannot come into contact with someone who's under a witness protection plan. Is that what you're saying here with this amendment?

Mrs. Sandals: If I can put this in plain English, the plain English intent, I believe, is that a private investigator—and it would typically be an investigator more so than a security guard—cannot knowingly try to destroy the new identity, to locate—that's "locate"—a person whom they believe to be under a witness protection program. If you're licensed to be a private investigator in Ontario, the authority which you have as a private investigator does not include hiring yourself out to try and locate people who are under a witness protection program.

Mr. Dunlop: OK, that's the intent of it, but there's nothing saying that someone who's a private investigator can unknowingly actually track down someone—how is he or she to know that someone is under a witness protection program?

Mrs. Sandals: That's why it says "know or suspect." Clearly, this is something that would depend on the circumstances, but I'm guessing that you might imagine a situation where somebody says, "We'd like to find person X, and the last we saw of them was on the stand at such and such a trial." This might be the first clue to make you suspect that perhaps this person is under a witness protection program, if that's your last lead. Clearly, there would be other circumstances where people would not necessarily know. Maybe that person has gotten themselves in some new trouble in their new identity and somebody would be trying to locate them for some other purpose. But for the purpose of attempting to locate a person who is protected, then that would be prohibited.

Mr. Dunlop: I'm just interested in the answer to this. It's got nothing to do, really, with the bill. I'm just curious: Is there actually a list of people who are in a witness protection plan that would be available to a private investigating firm? I'm not saying where they're located, but their actual names before they were relocated?

Mrs. Sandals: I would hope that if there is such a list, it would be confidential. Sorry; that's my reaction. It doesn't seem like information that we would want to be sharing with the world.

Mr. Dunlop: That's exactly my point here. A good private investigator, if he doesn't know if there's a list available, could actually, if he didn't contact the right people in the police service, stumble on to somebody who was under the witness protection plan completely not knowing that they were in that plan.

Mrs. Sandals: Yes. I think that's why the act tries to talk about somebody who is known or suspected by the licensee, i.e. the investigator.

Mr. Dunlop: Quite frankly, he could plead ignorance of that and go on and do his investigation.

Mrs. Sandals: Yes, so we'd have to look at the documentation and the circumstances around the individual case. This is something that you would clearly have to interpret on a case-by-case basis.

Mr. Dunlop: I'm just thinking of the private eye shows I've seen on TV. I can't imagine them going and saying, "Oh, I know that person, and I will no longer investigate them." I doubt that's going to happen.

Mrs. Sandals: Maybe we all watch too much TV.

Mr. Kormos: If the witness protection program is a witness protection program, then you shouldn't be able to locate these people in any event, as you've already suggested. If they can be located, then it's a pretty crappy witness protection program and of little comfort to the person who's seeking protection. Because, once again, if a private investigator can locate them, a journalist can locate them, the 14-year-old computer geek, Charlotte's kid next door down on Denistoun Street, can locate them, then the whole thing is quite irrelevant.

Look, I know what the section purports to do. You don't want biker gangs to have the luxury of hiring a private investigator to speed things up so that they don't have to waste time between cocaine deals and can get right down to business. But it's bothersome, because it raises a red flag about the integrity of the witness protection program if you're telling private investigators, "Don't try to find somebody in the witness protection program and blow their cover," because it implies—do you understand what I'm saying?—that that witness protection program ain't worth the paper it's written on, so to speak. So I suppose if Barbara Amiel turns on Conrad and goes into the witness protection program, I can't hang around Holt Renfrew trying to locate her. But then, no, I can, because I'm not a licensed investigator. So I can locate her, burn her, blow the whistle and expose her.

God bless, but I don't think the section is, quite frankly, much more than window dressing at this point. If we've got problems with the witness protection program and people finding people in the witness protection program, we should be dealing with that in a broader

sense, and certainly not so much at the provincial level, but at the federal level.

The Chair: Further debate?

Mrs. Sandals: Just to add that what this certainly does clarify is that private investigators who are licensed are not being licensed to carry out an investigation which is counterproductive to the intent of the state, which is to try and protect the witness from being located. So we're just saying that we do not want the private investigator carrying out investigations contrary to the interests of the state in this particular protection issue.

The Chair: Further debate?

Mr. Kormos: Just a prediction: This is one of those sections, mark my words, where, when at the end of the year the government tallies up its law and order agenda, they will say, "And we passed significant legislation to protect people in witness protection"—

Mr. Dunlop: They would never do that, not this government.

Mr. Kormos: Mark my words, Garfield. You've been around here long enough. They'll say, "We passed significant legislation to protect people in witness protection programs." Mark my words. This section is all about that announcement by whoever the Attorney General of the day happens to be.

1130

The Chair: Any further debate? Seeing none, we'll now move to consideration. Shall government motion 7, in reference to section 9, carry? All those in favour? All those opposed? Seeing none, it's carried.

Shall section 9, as amended, carry? Carried.

We will now move to consideration of section 10. Is there any debate on section 10? Are there any motions before the committee on section 10? Seeing none, we'll now move to consideration of section 10. All those in favour of section 10? Any opposed? Seeing none, carried.

We will now move to consideration of section 11. Are there any motions before the committee for section 11? Ms. Sandals.

Mrs. Sandals: I move that clause 11(2)(c) of the bill be struck out and the following substituted:

"(c) his or her consent for the registrar to conduct or have local police conduct a background check, including information regarding convictions and findings of guilt;"

This simply clarifies that the registrar may, in line with current practices, undertake the background check directly, without involving local police. The original intent of this clause was to expand the registrar's possibilities, which are either to do the background check through his office or to go to the local police. We need to make sure the registrar's authority remains captured in the act.

The Chair: Any consideration on motion 8?

Mr. Kormos: The need for a police record search is beyond dispute. The problem is that we're talking about a background check. You may or may not have experienced, through your constituency offices or otherwise, the nature of information that's revealed in a background check. It includes not only convictions, it includes charges for which there have been acquittals, it includes police contacts, it includes unsubstantiated allegations. It's a very difficult and fine line for the police to play because, of course, if they're being called upon to provide anything other than a clean, straightforward criminal record check, far be it from the police to start editing it. They don't want, down the road, to have a finger pointed at them for failing to report the contact around, let's say, a child sexual assault, even though no charges were laid and nothing came of it. Domestic disputes appear in police background checks. All I'm raising now is the concern around the lack of direction—and probably that's something best left to the privacy commissioner—to police services across this province around what information to include or not to include.

Also, because it doesn't appear to be here, the safeguard when you're doing a full background check is for the party themselves to have to submit the background check. That way they can, should they read it and decide that that 19-year-old suicide attempt—think about it; that's on a background check—when the police were called because you were 19 years old and your girlfriend or boyfriend left you after three weeks and you thought it was the end of the world—well, teenagers do attempt suicide under those circumstances. I use that illustration because that's one that I dealt with in my riding most recently. That then appears on a person's background check because the police did have a contact. Of course, the police attended and they did everything that they should do, end of story. The safeguard is to permit the party submitting the background check to see it before it's submitted and decide whether or not they're going to rely upon that background check to support their application for licensing, for instance. I'm not sure that that safeguard is here, because it's the capacity for the registrar to apply for. In other words, you're signing a consent to the registrar and to the police service saying, "You can divulge this information to the registrar."

It's a very difficult scenario, and one that's still unresolved here in the province. I'm not aware of other jurisdictions and how they've resolved it. I certainly don't think that a 19-year-old's suicide attempt should be the subject matter of a police background check 15 years later when they're applying for a security guard licence, end of story. If there are safeguards here where the records check is the property of the applicant, I'd like you to show them to me. I'd feel a higher comfort level, as compared to the—

The Chair: Thank you, Mr. Kormos. Further commentary on motion 8?

Mrs. Sandals: Simply to add that the issue in this particular amendment is, do the local police have to do them all or can the registrar directly access the information on CPIC? But having said that, there is nothing to preclude the individual, if they are concerned about what may show, to go and seek their own background check on CPIC, and if they don't like what is still showing up there, to go and seek a pardon. To give an example, it's not unusual for people who may have some teenage pot-

related convictions on their record to go and secure a pardon for that before they go submitting for employment. So there's nothing to preclude the individual from doing that if they're concerned that some past indiscretion which is no longer of concern is dealt with before submitting it. Nevertheless, in terms of licensing people to do security work and private investigation work, we do need to have the means to make sure that the registrar has access to the accurate information about their criminal background.

This is not to say that if you have, for example, recorded that there was an incident when you were 13 where something happened, that that would preclude you from getting a license. The registrar has discretion in terms of looking at it and saying, "This was an incident in the teenage years. There has been an exemplary record since." That would not necessarily deny the persons the licence.

The Chair: Further debate on motion 8?

Mr. Kormos: Indeed, an old pot conviction might be valuable if you were security staff at a Neil Sedaka concert, for instance. But you don't get the point: A pot conviction can be erased, you're right, for the purpose of it being produced with a pardon. In other words, it won't be a part of that record anymore. It still exists; it doesn't disappear. However, for a suicide attempt, the phenomenon of being the victim will appear on a police background check because that's a police contact. If one was the victim of a sexual assault, one risks having that information produced on a police background check. Again, there's no consistency, in the modest bit of research that I've done into it, from police service to police service.

I hear what you're saying. The problem is that most people don't realize that's what's going to show up until after it shows up; then they swallow their bubble gum, right? People don't anticipate that that teenage suicide attempt is going to be on what they colloquially call a "records check" or "background check." They assume it has to do with arrests and convictions. They assume that.

This is why I'm still saying I'm not going to oppose it, but I'm just using this opportunity to raise this issue very much on the record. I really think it's a matter of great concern, especially when we reflect on how we want to regard people or how we don't want to stigmatize people with mental health problems or people who have been victims of crimes. Again, obviously I'm talking about crimes like sexual assault, where there's a sense of stigma attached to being the victim. It's not a matter of broadcasting it on the airwaves, but even a potential employer—and hopefully a registrar's office would use sensitivity.

All I'm saying is, it's a problem. You're right, it has nothing to do per se, except that it would be nice to see in legislation requiring records checks some protection by making the record the property of the applicant, rather than the person obtaining it with their consent.

The Chair: Any further debate on motion 8? Seeing none, we'll now move to consideration. All those in favour of government motion 8? All those opposed? I declare the motion carried.

Shall section 11, as amended, carry? All those in favour? All those opposed? Section 11 carries.

1140

Mr. Kormos: Mr. Chair, I invite you to proceed from sections 12 through 14.

The Chair: If that's the will of the committee, I invite commentary on sections 12, 13 and 14. Seeing none, I will now move to block consideration. Shall sections 12, 13 and 14 carry? All those in favour? All those opposed? Sections 12, 13 and 14 carry.

We'll now move to consideration of section 15. Are there any motions before the committee?

Mrs. Sandals: I move that clause 15(1)(b) of the bill be amended by striking out "his or her" and substituting "the."

The intent of this amendment, while it might seem trivial, is that, as it reads at the moment with "his or her licence," that would only apply to individuals. With "the licence," it would apply to both individuals and business entities, the businesses that are licensed.

The Chair: Any further debate or commentary on motion 9? Seeing none, we'll now move to consideration of motion 9. All those in favour? All those opposed? I declare motion 9 carried.

Shall section 15, as amended, carry? I declare that section carried.

With the committee's indulgence, we can move to block consideration of sections 16 to 37, inclusive.

Mr. Kormos: No, Chair, sections 16 to 22, inclusive, please.

The Chair: I'll accept that. Sections 16 to 22, inclusive: Seeing no objections, is there any debate on those particular sections? Seeing none, shall sections 16 to 22, inclusive, carry? All those in favour? All those opposed? Seeing none, sections 16 through 21, inclusive, carry.

We'll now move to consideration of section 22.

Interjections.

The Chair: Did I miss one?

Mr. Kormos: Fair enough. Go ahead. Let's do 22. I'm going to support it. I'm not going to suggest that I have anything by way of debate around it.

The Chair: Is there any motion before the floor on section 22? Seeing none, we'll move to the vote. Shall section 22 carry? Carried.

We'll now move to consideration of section 23.

Mr. Kormos: It is incredible that, in a regulatory regime designed to license and set standards for security guards and private investigators, the government would include in its bill warrantless searches. There's just, in my view, no room in a democratic nation for warrantless searches. The Criminal Code and criminal law provide for any number of instances of entry where there's true emergency, where lives are at stake, etc., and to contemplate warrantless searches—and I appreciate the language: "by reason of exigent circumstances it would be impracticable to obtain the warrant."

The JP's on a bender and unavailable until after the weekend; there is no JP in town because they're all at a convention at the Delta hotel in Ottawa; I didn't have any search warrant forms for the JP to sign; if I didn't knock down the door and obtain the item now, the party might have burned it or destroyed it. We don't do warrantless searches in these sorts of circumstances. I know that they've appeared from time to time in bills, and from time to time the government—for instance, on the marijuana grow-op, the government was very good about pulling the warrantless searches. Do you remember that, Mr. Dunlop?

I want to indicate that I will be voting against this section and will be asking for a recorded vote. I know it doesn't apply to a dwelling place and it recognizes the sanctity of the dwelling place, but for a corporate body, for instance, their business office is their dwelling place.

The Chair: Is there any discussion on section 23? Seeing none, we'll proceed to the vote.

Mr. Kormos: Recorded vote.

Ayes

Brown, Brownell, Flynn, Sandals.

Nays

Dunlop, Kormos.

The Chair: I declare section 23 carried.

Again, with the committee's indulgence, I'd ask for block consideration of sections 24 to 38 inclusive. Are there any objections? Seeing none, I open to floor for debate on sections 24 to 38.

Mr. Kormos: I note that once again this takes us up to the wacky section 35, which I expected the government to amend. Although it protects the floorwalker, the undercover security guard, from having to wear a uniform, it does not protect that person from the requirement that, on request, that person identify himself or herself as a security guard and, on request, produce his or her licence. Nor does it address the concern raised by the security guard who spoke to us in London about the privacy issue.

Again, not all security guards are going to be doing the same kind of security work. We know that police officers—it was a lengthy process, as I recall it—it seems to me across Ontario now wear identification as a matter of course. But that hasn't always been by way of names; it's been by way of number, amongst other things.

I just think it's wacky that if a person is doing so-called undercover work as a security guard—we had security personnel speak to this, to the committee—if you suspect that they're a security guard, you can go up to them and say, "Are you a security guard?" And they have to go, "Yes." Then you say, "By the way, pal, let's see your licence," and they've got to produce it to you, otherwise they've committed an offence under the act.

I use floorwalkers in a retail establishment first and foremost. Somebody suggested, "Well, that might be a good deterrent," because if you knew there was the security guard tailing you, then you wouldn't boost things. That speaks for itself. If you think there's a security guard there, of course you don't boost things. But if you ask the person and they don't comply by identifying themselves as a security guard, you either boost it—not you, but people in general—or you use your discretion. But surely there are other more complex circumstances where security guards are doing protection of property or protection of persons work, where we shouldn't expect a security guard to have to identify himself or herself as a security guard if they're doing certain types of activities. I just don't know why the government didn't respond to that.

The other concern is around the identification. Ms. Sandals may be rushing to point out the standard of the licence. I'm sure the licence will be defined or described in the regulations, but is that going to include, for instance, surnames of people as compared to identification numbers?

I appreciate the problems. We want the whole issue to be transparent. We want security guards to be accountable. At the same time, I want to protect the woman—not that I want to single out women as people who need protection—who maybe has had regrettable experiences with stalkers and who's got some wacko who wants her identification so as to track her down. Once again, for eight or nine bucks an hour, it's not worth it. We're not talking about the active parapolicing type of security guards, the ones who are out there performing policing work, who may perhaps be expected to be held to a standard more akin to police officers. We're talking about somebody making eight bucks an hour, keeping food on their and, more often, on their kids' table. What are we doing to protect those people—we had that concern addressed to us in London—and what are we doing about the bizarre scenario of the undercover security person who doesn't have to wear a uniform, but you can finger him or her by simply saying, "Are you a security guard?" and they have to answer?

1150

The Chair: Further comment on block consideration of sections 24 to 38? Mrs. Sandals.

Mrs. Sandals: Simply to note in terms of the floorwalker, first of all, if we look at section 34 around private investigators, recognizing that private investigators may, in fact, be working totally undercover, that is allowed. So if somebody is acting undercover as a private investigator, there is not a requirement for identification—only if they are representing themselves as a private investigator at the time. For private investigators working undercover, there would be an exemption.

With respect to the issue of the floorwalker, it would seem that at the point that somebody goes up and says, "I've figured out you're the floorwalker," they've blown their cover at this point anyway. That is, the purpose, which is to be the unnoticed fly on the wall, has already been blown by the person who said, "I've figured out who you are." It isn't like there's some breach of security

here; it has already been breached in the sense that they've been "made," if I can sort of use the street talk thing.

In terms of the privacy issue, I think there are a lot of things where, if you are in the business of interacting with the public, which we seem to have a security guard doing, and representing oneself as having some protective role, then part and parcel of that is that you do need to be willing to identify who you are if you're going to carry out that role. But I would note that when we were looking at that particular license at the London hearings, I did in fact look at it because I was interested as to what personal information was on that license.

The license had the name; it did not have an address, it did not have any contact information. In producing the license, all that you have offered up is the name. You are not offering up information beyond the name, which would allow you to stalk, follow home or pick out of the phone book—whatever—that person, because there was no information other than the license number, the registrar's signature and the name of the holder that would be useful. It did not have an address or a birth date or all those other things that you might think of as identifying information on it.

Mr. Kormos: Again, I'm not going to belabour the point, but gosh, you can't even get a flight attendant's last name, for obvious reasons. They prefer that only their first names are used to avoid people identifying them in any number of ways or manners. The world has changed dramatically; we all know that. In any number of businesses, call centres that you do business with, you can't get a last name for a person. Even if you want to speak to his or her manager and complain about how that person, in your view, mishandled something, there are no last names, for that very same reason.

I hear what you're saying, but all I'm saying is I heard what the security guard said, the woman who was before us. I think it's something that the government should look at very carefully in the regulatory process.

Mrs. Sandals: On the other hand, if you are a floorwalker and you're about to escort somebody out of the store, call the police, whatever, then there would seem to be some reasonable public expectation that that person should be able to show some official authorization indicating that they are a duly licensed security guard and entitled to be doing what they are doing.

That proof of authority, if you will, to say, "I'm sending you over here to this room to be questioned because I think you're shoplifting" or "I'm escorting you out of the building," that duly authorized proof that you are what you're representing yourself to be is the licensed card from the registrar. So I understand that people might be concerned, but if you're going to have that sort of interaction with the public, what the Shand inquiry tells us is that you must then be prepared to be able to identify that you are what you're representing yourself to be.

Mr. Kormos: Again, precisely the point. Not all security guards are doing the same kind of work. I already said that we accept—all of us, I think—that parapolice, people doing police or quasi-police work, are held to a higher standard, a standard closer to policing.

A woman earning eight bucks an hour sitting at an entryway to a plaza—I can't even begin to imagine or exhaust all the circumstances. I'm saying that for eight bucks an hour, she may well warrant some consideration in the extent to which she has to identify herself by way of, let's say, a surname. All I'm saying is that the government should reflect on this in its regulatory process and consider that, once again, in the multiple classifications, there may well be different standards required for the level of identification.

The Chair: Is there any further debate on block considerations of sections 24 to 38? Seeing none, we'll now proceed to the vote. All those in favour of block sections 24 to 38? All those opposed? I declare those sections 24 to 38 carried.

I advise the committee that we have before us a proposal for a separate new section 38.1. Are there any motions before the committee?

Mr. Dunlop: I move that the bill be amended by adding the following section:

"Reports on use of force

"38.1 A licensee shall keep a record, containing all prescribed particulars, of all incidents in which the licensee used force while acting as a private investigator or security guard, and shall furnish a copy of the record annually to the minister on or before the prescribed date."

During the committee hearings we heard a number of times, it was brought up, about the use of force and the concerns the general public has with security guards or private investigators using force. I felt that it would be proper to enshrine it in the legislation, as opposed to some regulation later on, and to make it clear along with the other parts of section 38 as well.

I'd ask the committee to support this. I believe that it would be very, very helpful for the ministry to be able to monitor from the licensees any number of times that use of force had actually taken place. In some cases, there might not be a cause for any use of force, but I think if you look at the overall intent of the bill and what private security guards and private investigators do, as opposed to police services, it would be good over a long period of time to have a record on the use of force.

The Chair: Any further debate on PC motion 10?

Mrs. Sandals: One of the things that didn't exist in the past and which the Shand inquiry recommended and which we have followed through on is an extensive complaints and investigation process. In fact, we were just talking about the power of investigators under this act when investigating security breaches, or at least breaches of the law, so that there is now a complaints process which has been put in place which has extensive powers for the registrar to initiate an investigation, an extensive complaints resolution process, powers for the registrar to remove a licence if it's found out that people or businesses that have been licensed are acting inappropriately.

None of this ever existed before, and what that complaints and investigations process will allow is that when there has been an inappropriate use of force, the person who is subject to the inappropriate use of force will be able to lodge a complaint. The registrar, by definition, because the registrar will be the focus of all the complaints, will be able, through the complaints process, to have information about the inappropriate use of force.

1200

If it should become necessary at some later date to have a register of every use of force, then that would be possible under the regulation, but at this point I think we would feel that we need to, first of all, get some experience with complaints around the inappropriate use of force because that's, after all, what we're all concerned about: that we have a way of collecting information about the inappropriate use of force. That already exists under the complaints and investigation language.

Mr. Dunlop: I know you're zeroing in on the complaints section, but what I'm saying here in this motion is that I feel it would be appropriate for anyone holding a licence in any particular area to actually be able to report on a yearly basis the number of times. Many of these cases may never need to be complained about or even reported in any other way, but it's an opportunity for the ministry to take a look at each licence at the end of each year and be able to monitor the number of times that an individual holding a licence has actually had to report it.

If you're starting out fresh with a new bill and a new intent in the legislation, I think it's appropriate that we monitor something as important as use of force. We all know that the use of force is a very important issue with the police services when it comes to this bill. I'm not saying for one second that the complaints division section under the registrar doesn't have an appropriate place, but I do think that when use of force is such an important issue around the bill, the licensee should, on the honour system, be able to provide a list each year on the number of times he's actually had to use force.

I ask for a recorded vote on this as well, Mr. Chair.

The Chair: Is there any further debate or consideration on this motion? Seeing none, we'll now proceed to the vote.

Ayes

Dunlop.

Nays

Brown, Brownell, Delaney, Flynn, Sandals.

The Chair: I declare this motion defeated.

We'll now move to consideration of section 39. Are there any motions before the committee? Seeing none, we'll proceed to the vote. All those in favour of section 39?

Mr. Dunlop: Recorded vote.

Ayes

Brown, Brownell, Delaney, Flynn, Kormos, Sandals.

Nays

Dunlop.

The Chair: I declare section 39 carried.

We'll now move to consideration of section 40. Are there any motions for the committee?

Mrs. Sandals: This is simply a translation glitch. I move that the French version of paragraph 4 of section 40 of the bill be struck out and the following substituted:

"4. Agent, dans une acception autre que celle d'agent de sécurité."

Le Président: Merci, madame Sandals. Nous procédons au vote.

Is there any further debate on this particular item? Seeing none, all those in favour of government motion 11? None opposed. Carried.

We'll now move to, with your indulgence, block consideration of sections 41 to 52, inclusive. Seeing no objection and no further debate, all those in favour of block consideration of sections 41 to 52, inclusive? All those opposed? I declare those particular sections carried.

Now, consideration of section 53: Are there any motions for the committee?

Mr. Dunlop: New subsection 53(1.1): I move that section 53 of the bill be amended by adding the following subsection:

"Matters that must be included

"(1.1) The code of conduct must include standards respecting,

"(a) when a private investigator or security guard may use force and the level of force that may be used in carrying out his or her work;

"(b) activities, normally performed by a police officer, that may not be performed by a private investigator or security guard; and

"(c) when a private investigator or security guard is obligated to call in the services of either the Ontario Provincial Police or the local municipal police service, or both."

The Chair: Is there any further commentary on PC motion 12? Mrs. Sandals.

Mrs. Sandals: Again, the code of conduct is going to be specified in regulation, and what should be in the code of conduct will be done in consultation with the stakeholders. So I believe that we will already be able to deal with that.

But I've got some particular concerns about the matters that are specified here, in particular item (c), which talks about specifying in the code of conduct "when a private investigator or security guard is obligated to call in the services of either the Ontario Provincial Police or the local municipal police service, or both." Going back to my previous comment about regulations and enshrining things in legislation, I actually have a bit of a horror of legislation which tries to do one

size fits all for the entire province, when it may be quite inappropriate. It seems to me that when it would be logical to call the police—when you know that the nearest police station is five minutes away or two minutes away or whatever—in an urban situation could be dramatically different from when you would call the police if you were dealing with a situation in northern or rural Ontario, where the nearest police station could well be 30 minutes or an hour away, and if you happened to be dealing with this in February, there may be a blizzard and nobody's getting here for three days until the road gets plowed. So I've got a bit of a horror in setting up an expectation that we can be totally black and white about what should probably be a local judgment call depending on the local circumstances that present themselves.

There is the facility to do the code of conduct in regulation. I am very much concerned about getting to this degree of prescriptiveness in legislation, quite frankly, without consulting our stakeholders, because we have not consulted the stakeholders about this degree of prescription.

Mr. Dunlop: It was my understanding, in listening to the Ontario Provincial Police Association and the PAO, that in both of their presentations they asked for these types of amendments to be made to strengthen—they need an opinion on this, as far as I'm concerned. They want to know where they stand in relation to the code of conduct.

Clearly, you're not going to support this, but I'll ask a question back to the parliamentary assistant: Is it the intent of the minister to establish a code of conduct?

Mrs. Sandals: Absolutely.

Mr. Dunlop: So why wouldn't we, in that case, then, have "shall" in there instead? Why is it "may" instead of "shall" in 53(1)? I'm just backing up to the code of conduct in 53(1): "The minister may, by regulation, establish a code of conduct." Why wouldn't it be, "The minister shall, by regulation, establish a code of conduct"?

Mrs. Sandals: Because I think you'd normally tend to give some flexibility in terms of the timing around when that's going to happen.

Mr. Dunlop: I'm hoping it's going to happen. If you're saying it's going to happen, I hope it's going to happen immediately, not 10 years from now or something like that. I'm curious as to why we even have that in there if it's "may." I'm trying to strengthen the responsibility of the police services in relation to what this bill means to their responsibilities.

Mrs. Sandals: In terms of police responsibilities, police responsibilities are laid out under the Police Services Act. This does not describe police responsibilities; the Police Services Act describes responsibilities. But it is quite normal to say in legislation that the minister may prescribe a regulation, so there's nothing particularly unusual about that language.

The Chair: Is there further consideration or debate on PC motion 12? Seeing none, we'll now move to consideration.

Mr. Dunlop: Recorded vote, please.

Ayes

Dunlop, Kormos.

Nays

Brown, Brownell, Delaney, Flynn, Sandals.

1210

The Chair: I declare PC motion 12 defeated.

We'll proceed to consideration of section 53. Shall section 53 carry? All those opposed? I declare section 53 carried.

We'll now move, with the committee's indulgence, to block consideration of sections 54 to 58, inclusive. Is there any debate on these sections? Seeing none, all those in favour of sections 54 to 58? All those opposed? I declare those blocked sections carried.

We will now move to the housekeeping items.

Shall the title of the bill carry? Seeing no debate on that, the title of the bill carries.

Shall Bill 159, as amended, carry?

Mr. Kormos: It is regrettable that this long-awaited opportunity to protect the public with an updated Private Investigators and Security Guards Act has been proceeded with, in my view, in such a hasty way, because it has failed the public and workers in this industry in a few very significant ways.

First and foremost, I believe it is premature to pass this bill in committee, never mind send it back to the House, until 30,000-plus security guards in Ontario have some clear understanding of whether or not they're going to have a job the day after this bill is proclaimed.

I'm not trying to pretend by any stretch of the imagination—I'm going to talk about the parapolice in just a minute—that the people out there doing parapolicing, the people in the blacked-out windows of the pseudo police cars, with the guard dogs, the patrol dogs and the Cool Hand Luke dark sunglasses—look, part of the industry is genuinely problematic and there have to be standards for people who are engaged in that type of parapolicing: company training and testing.

But we're talking about a whole other world as well. We're talking about plain old security guards—if he or she doesn't mind me saying so—who are working in a historically low-wage industry, who are there because they've lost other jobs that were taken away from the communities they live in, whether it's northern Ontario or the south. We've seen what happens to people who lose their jobs in the mill or in the steel plant. Security guard is one of the options for these people.

They've clearly passed muster in terms of the basic standards regarding character, because they're licensed. They clearly have managed to work and keep those licences because they've still got those licences and they're still working. I believe there is a type of security guard work—what I and others have called that very passive level of security guard work—that doesn't require as onerous a standard, as onerous a testing, as

onerous a training program as the parapolicing. We may well have a standard that's higher than the current one, but in the course of achieving that end, I do not want to see anywhere from 15,000-plus people lose their jobs here in Ontario. It's easy to say we can have them submit to performance testing, but you and I both know that for a whole lot of folks, especially older folks, that in and of itself is a daunting exercise.

I'm not prepared to support this bill for completion here in this committee until we have a strong, clear assurance to those security guards. I say the way to do it is to grandparent all of them as that first level of passive security guard. That to me would be consistent with everything this committee and the government want to do around this area.

The final area is with respect to what's happening here in terms of a regime being created that will institutionalize private policing. I regret the growth of private policing. I understand the history: I understand the history of Pinkerton's and the Rockefellers and shooting down striking coal miners. The history of policing had its origins in North America as private police for capital interests—very much so. But the justice thing came about as the development of a public police force. Regrettably, because of funding shortages for municipalities, more and more elements of that municipality have to rely upon private policing. This bill institutionalizes that, and will encourage the development of parapolice, private policing—to the detriment, I am convinced at the end of the day, of public police.

Those are my concerns, as they remain, about the bill.

Mrs. Sandals: Just let me briefly respond by saying that the Shand inquiry pointed out a number of serious structural problems within this industry. We need to respond; we are responding.

One of those issues was a huge differentiation in the training, the skill level and the integrity, quite frankly, of various participants in the industry. While Mr. Kormos is absolutely right, that there are all sorts of people out there who are doing a great job, unfortunately it's impossible to sort out who is doing a great job, who has an appropriate skill level, who is following an appropriate code of conduct until we actually get into the industry and deal with this on a case-by-case basis. That is why we are insisting that everybody will need to go through some form of testing.

As I've mentioned previously, the Steelworkers are represented on the advisory committee, so there is absolutely nothing that would prevent the representatives of the existing guards working with the advisory committee to find some sort of skills-base testing that could be applied to those who are already in the industry. But that's a conversation that they are going to have to have—the workers' representatives with the advisory committee. But in terms of doing some sort of blanket grandfathering, that would run exactly contrary to the purpose of the act.

I do want to assure people that there is extensive regulatory authority which lets us determine classes of security guards and determine the training and testing which is appropriate, and that allows us to, as you said, look at those people who are at the watcher end versus those people who are having confrontations with the public, and make sure that we can do that through the regulatory authority. Let me assure you that the government is quite concerned that we not have a lot of firms who are doing parapolicing, and that is precisely why we are bringing in a bill that has teeth, because we no more want to see parapolicing or private policing in the community than you do.

Mr. Dunlop: I just had one further comment. Very briefly, I am disappointed. It has taken 40 years to get to the stage where we're having an amended bill or a new bill on the private security guards. I think it's disappointing—to me, anyhow—that with the Shand inquiry and the 22 recommendations they came forward with, so many of the details of those recommendations are left up to regulation. I find that part disappointing. I'm not sure at this particular time where our caucus will stand on this bill, whether we'll be supporting it in the House or opposing it.

I've heard the government, when they were opposition, say so many times, "Why do we have so many regulations?" And yet here we are today; basically, the whole bill is relying upon regulation. I just want to put that on the record.

The Chair: Is there any further debate?

Mr. Kormos: A recorded vote.

The Chair: Recorded vote. Shall Bill 159, as amended, carry?

Ayes

Brown, Brownell, Delaney, Flynn, Sandals.

Nays

Dunlop.

The Chair: I declare Bill 159, as amended, carried. Shall I report the bill, as amended, to the House?

Mr. Kormos: A recorded vote.

The Chair: Recorded vote.

Ayes

Brown, Brownell, Delaney, Flynn.

Nays

Dunlop, Kormos.

The Chair: Is there any further business before this committee?

Mr. Kormos: Thank you, Chair; thank you to research for the security brief.

The Chair: Thank you, Mr. Kormos. This committee stands adjourned.

The committee adjourned at 1219.

CONTENTS

Monday 3 October 2005

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Président
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)

Mr. Michael A. Brown (Algoma–Manitoulin L)
Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)
Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)
Mr. Kevin Daniel Flynn (Oakville L)
Mr. Frank Klees (Oak Ridges PC)
Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)
Mr. Mario G. Racco (Thornhill L)
Mrs. Elizabeth Witmer (Kitchener–Waterloo PC)

Substitutions / Membres remplaçants
Mr. Garfield Dunlop (Simcoe North / Simcoe-Nord PC)
Mrs. Liz Sandals (Guelph–Wellington L)

Also taking part / Autres participants et participantes
Mr. Dudley Cordell, counsel,
Ministry of Community Safety and Correctional Services

Clerk / Greffier
Mr. Katch Koch

Staff / Personnel
Mr. Ralph Armstrong, legislative counsel